

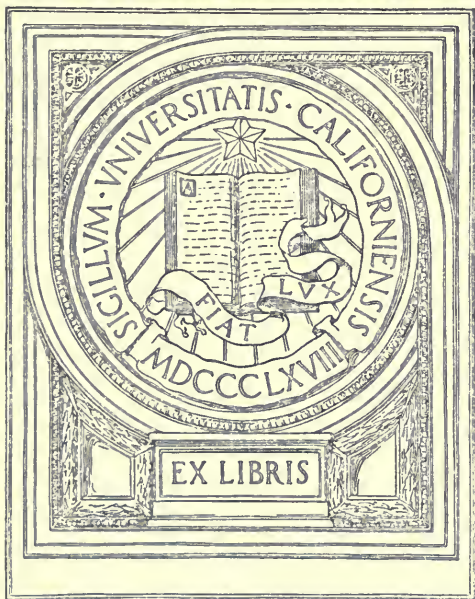
CLASSICS OF THE BAR



VOLUME II

ALVIN V.
SELLERS

UNIVERSITY OF CALIFORNIA
AT LOS ANGELES



THE GIFT OF
MAY TREAT MORRISON
IN MEMORY OF
ALEXANDER F MORRISON



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

CLASSICS OF THE BAR





After the Painting by Gustave Doré

CHRIST LEAVING THE PRÆTORIUM

CLASSICS OF THE BAR

STORIES OF THE WORLD'S GREAT JURY
TRIALS AND A COMPILATION OF
FORENSIC MASTERPIECES

THE
LAW
OF
THE
LAND

BY

ALVIN V. SELLERS

VOLUME TWO

THE
LAW
OF
THE
LAND

BAXLEY, GA.

CLASSIC PUBLISHING CO.

1911

TO VIVID
ABSTRACT

COPYRIGHT, 1911, BY
ALVIN V. SELLERS

ABSTRACT TO VIVID
23.13.13.20.1 TA
YRABU

THE TROW PRESS, NEW YORK

H V
6211
S46c
v. 2

Contents

	PAGE
THE TRIAL OF JESUS FROM A LEGAL STANDPOINT . . .	15
Judge Gaynor's Address	17
BEN HARDIN'S REPLY TO PRENTISS	40
Speech of Mr. Hardin	47
SYESTER'S PLEA FOR HIS CLIENT	100
Argument of Mr. Syester	100
THE MURDER OF JOSEPH WHITE	152
Mr. Webster's Address to the Jury	155
SENATOR VEST'S TRIBUTE TO THE DOG	240
The Eulogy	240
THE TRIAL OF GEORGE W. COLE	243
Opening Speech of Mr. Hadley	244
THE CASE OF KILBOURN VS. THOMPSON :	286
Speech of Senator Voorhees	287

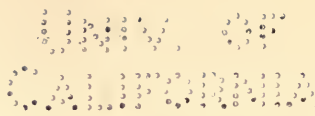
432658

Illustrations

	FACING PAGE
CHRIST LEAVING THE PRÆTORIUM . . .	<i>Frontispiece</i>
W. J. GAYNOR	18
BEN HARDIN	40
DANIEL WEBSTER	155
GEORGE G. VEST	240

CLASSICS OF THE BAR





Classics of the Bar

The Trial of Jesus from a Legal Standpoint

THE little violet that grows wild and sheds its perfume upon some rejected one's lost, neglected grave oftentimes treasures beneath its tranquil shade the dust of a purer, sweeter heart than the richest, rarest rose that challenges with its imperial beauty the splendors of gilded, silvered tombs, that it touches with its fragrance, in some jeweled city of the dead.

Many have known it not, but Jesus of Nazareth knew. Himself rejected, he was friend to the outcast and despised. In one supreme hour of opportunity, when those who cried for human blood were shamed, a divine heart felt and said, "Go, and sin no more."

The story of this gentle life will be told until death has closed the lips of language still and laid its heavy hand upon the heart-beats of our world. Until that final hour, the lowly birth, the noble life, and, over all, the stainless drapery of triumphant death will be

Classics of the Bar

portrayed in song and story, in poetry and in all the literature of the world.

His was a life of service, scattering seeds of thought and love by the wayside to become the glorious fruitage of a grander day.

Held in the trembling arms of nature, he felt the griefs and sorrows that come to mortal men; but his heart never lost its love and, wearying not of kindly deeds, he lifted the stumbling and the fallen, asking for himself no pleasures or treasures beyond the riches of human hearts made pure.

Thrilled with the loftiest sentiments that ever blossomed in speech, he cherished the pure, defended the right, attacked the wrong; and, in masterly appeals to the better natures of men, proclaimed that his kingdom was not of this world.

So lived the Nazarene, a great, unselfish soul, closer than a brother to those who were friendless and alone, spanning with radiant bows of faith and hope the dark clouds of every life, and setting more than one shining star in its somber sky.

And then, alas, before the morning of his life had felt upon its brow the breath of noon, to die by crucifixion!

Is it any wonder that the human heart is so overwhelmed with the unutterable sadness of it all, as not to think of this tragedy as having a legal point of view?

Judge Gaynor's Address .

Yet, Jesus was tried in a court of law, and received the sentence of death at the hands of a judicial tribunal for an alleged infraction of the law's decrees. Was he given a fair trial? Were the things charged against him an offense against the prevailing law? Did the evidence support the verdict? Was the sentence legal? Did Jesus receive every right the law guaranteed to those accused of crime? .

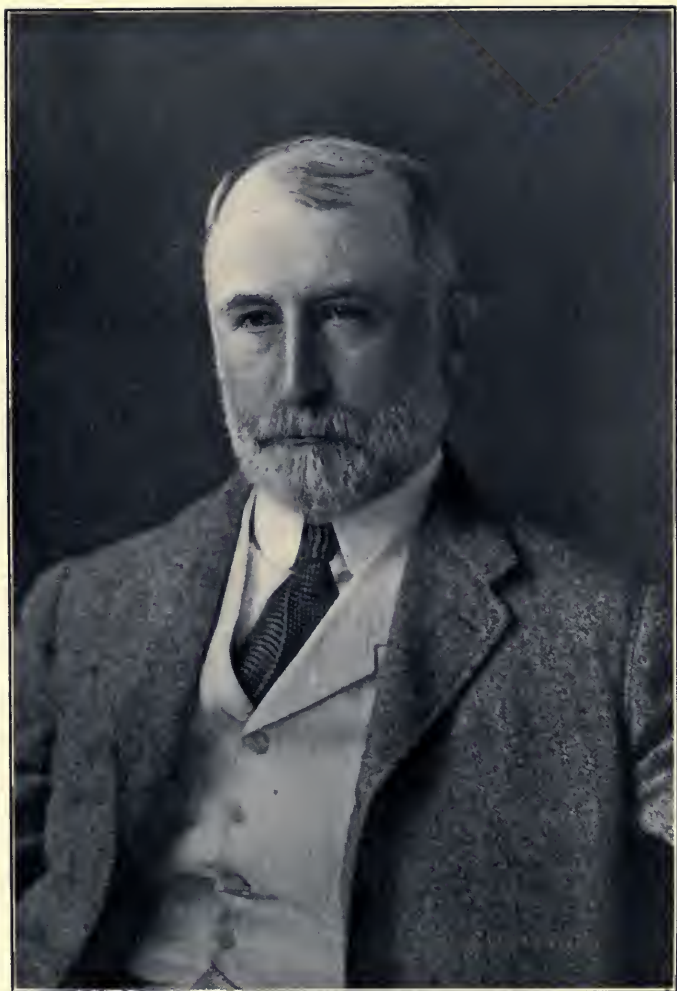
The address which follows is a discussion of these questions by Hon. W. J. Gaynor, of New York, and was delivered at Great Barrington, Mass., September 9, 1897, before the Thursday Morning Club of that city.

Judge Gaynor is an able and distinguished jurist, formerly Justice of the Supreme Court of New York, and Mayor of New York City. He is noted for his analytical mind, philosophic character, judicial temperament; and is well fitted and qualified to review in all of its legal phases this tragic trial of the ages.

Judge Gaynor's Address

I COME here to speak upon the arrest and trial of Jesus, viewed from the standpoint of their regularity and legality according to the system of law and government under which they occurred. Though the subject be one which requires us to leave out of consideration, for the time being, the divinity of Jesus, it cannot be approached without reverence.

There seems to be scarcely any idea of the fact that Jesus was tried and condemned in a court of law. The common understanding of this great event does not embrace any impression of judicial order or system. The general notion is that Jesus was the victim of a mob, and almost of what we call lynch law. That his destruction was wrought under the operation of an exact system of government, law and judicial procedure, is seldom thought of. And yet such was the case. It was in 1887 that I first looked at Munkácsy's great painting, "Christ before Pilate." There was Pilate represented as sitting upon the judgment seat, with Jesus standing before him, and a mob howling for his condemnation. It did not seem that that could be true. In the first place, the gospel narratives show that Jesus was not tried before Pilate, but before a Jewish court. These narratives, though somewhat crude and unprecise, are nevertheless quite unmistakable. In the next place, though Pilate had incidental judicial powers as procurator of the emperor, in matters relating to Roman jurisdiction and administration in the province of Judea, he did not sit as a judge in the case, but acted only in his executive capacity as Roman governor or procurator. Judea had been conquered by Rome, and made a Roman province, and Pilate was at that time the governor sent out from Rome. He was primarily an executive, not a judicial officer. And finally, no such scene could have occurred in a Roman court; for Roman jurisprudence was the most scientific and august that has ever existed, and to this day



WILLIAM J. GAYNOR

forms the substantive part, and stands as the model, of every legal system in Christendom. A criminal trial in a Roman court was an orderly procedure, embracing the confronting of the accused with the witnesses against him, and their examination in his presence; and this method was not confined to Rome, but was followed by the Romans wherever they established civil tribunals for the administration of justice.

The subject we are considering naturally calls up questions which embrace its entire scope. Was the arrest of Jesus lawful and regular? What was charged against him, and did it constitute a crime in law? Was the Jewish court which tried him lawfully constituted, and had it jurisdiction? Was the trial conducted fairly and according to law? Was the judgment of the court supported by evidence? And, finally, what was the nature of Pilate's official action, and to what extent may he be held responsible for the death of Jesus?

Jesus was tried before the great Jewish council and court called the Sanhedrim, the most formal and imposing, and probably the most august, judicial tribunal which ever sat. The judges of the Sanhedrim were 71 in number, consisting of the high priest, the chief priests, the elders and the scribes. (*Encyclopedia Britannica*.) In minor cases three judges made a quorum or lawful court, while in cases of life and death the requisite number was 23. There was no such thing as a sole judge in Israel. "Be not a sole judge, for there is no sole judge but One," was the law. The judicature of the Jews was as exact, scrupulous and minute,

Classics of the Bar

especially in cases of life and death, as ever existed, and its spirit has been breathed as the breath of life into every Christian jurisprudence in the world. It went even beyond the question of reasonable doubt in our law in favor of those accused of crime, concerning which we occasionally hear such shallow criticism. An ordinary trial might be prolonged into and concluded in the nighttime, but a trial for life could only be held during the daytime, and a judgment of acquittal only could be rendered upon the day on which it was ended. If such a judgment was not arrived upon that day, then the court had to postpone judgment to the morrow. Meantime the judges had to stay together, "and eating little meat and drinking no wine," confer upon the case.

In minor trials a majority of one was necessary to judgment; but in capital trials a majority of two was required to condemn. In a criminal case the accused could not be made to witness against himself; nor could a conviction be had in a capital case upon the testimony of a sole witness. At least two witnesses were necessary. "At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death" (Deuteronomy xvii: 6). And they had to give their testimony confronted by the accused, and "agree together." This was a critical point, and their testimony was scrutinized and compared on the question of agreement with the utmost technicality. In cases of life and death, rule after rule, and presump-

Judge Gaynor's Address

tion after presumption, in favor of the accused, were laid down and accumulated until a false conviction was almost impossible; and the spirit of the law in reference to the taking of human life is well manifested in that saying found in the Mishnah, that the Sanhedrim which oftener than once in seven years condemns to death, is a Sanhedrim of murderers.

Nor did the safeguards thrown around the accused end with his conviction. He was then led out to be stoned to death, that being the Jewish manner of execution (I Kings xxi: 13; Leviticus xxiv: 14); but the court remained sitting, and if any one still presented himself in time to show the innocence of the condemned, he was recalled for further hearing. A practical illustration of this is to be found in the story of the chaste Susanna and the elders, she being called back while on her way to execution, upon the interposition of young Daniel, and acquitted, her false accusers being put to death instead (Daniel xiii, Douay translation). Even though the story be considered apocryphal, its antiquity makes it authoritative in respect of Jewish criminal procedure.

We ascertain what were the laws and established procedure under which Jesus was arrested and tried, by turning to the Pentateuch of the Old Testament (especially to Exodus and Deuteronomy), which contained the written or statute law, and to the Mishnah, which contained the common, or custom-made law, expressed in the precepts and commentaries of the learned rabbis or doctors of the law. These commen-

taries were replete with casuistries and niceties which became an abuse and also grew to be very voluminous, as is the case with the decisions and commentaries upon our own law. The learned Rabbi Hillel, who just preceded the time of Jesus, being therefore asked in jest by a Roman official if he would tell him the whole law while standing upon one foot, gravely complied and responded: "What thou would not have done to thyself, do not to thy neighbor. This is the whole law. All else is commentary." There has recently come from the press a little book with the title, "As Others Saw Him," written by a learned young Orientalist of London, which conveys in a most attractive way a general understanding of the Jewish law and judicial system as they were at the time of Jesus, and also gives a most vivid impression of the personality and daily life of Jesus.

There is no historical account of the arrest and trial of Jesus except that of the gospel narratives. In prosecuting our inquiry we have therefore to depend wholly upon them. In fact, outside of them we are not only without historical authority upon the subject, but almost without any for the existence of Jesus. It seems to be generally conceded that the passage concerning him in Josephus is a spurious interpolation, styling him as it does "a doer of wonderful works," and even averring that "he was the Christ," and that "when Pilate, at the suggestion of the principal men among us, had condemned him to the cross," he appeared "alive again the third day, as the divine

Judge Gaynor's Address

prophets had foretold these and 10,000 other wonderful things concerning him" (*Antiquities*, book xviii; chapter 3, sub. 3). It does not seem that Josephus could have written anything like this. It bears the impress and has the sound of a much later date. All that is left is the passage in Tacitus which, after telling how Nero, in order to divert the rumor that he himself had set fire to Rome, accused the Christians of it, and tortured many of them to death, states that "Christus, the founder of that name, was put to death as a criminal by Pontius Pilate," but that his "pernicious superstition" broke out again "not only through Judea, where the mischief originated, but through the city of Rome also, whither all things horrible and disgraceful flow, from all quarters, as to a common receptacle" (*Annals*, book 15, sub. 44).

The Jewish nation was at the time of Jesus under Roman dominion; but, as was usual with the Romans in dealing with subject nations, they had left to the Jews their religion, laws, manners and usages, and even their system of judicial administration, except in respect of Roman jurisdiction and administration over the province, and also as they might be otherwise incompatible with Roman supremacy; so that it was in the ordinary course for Jesus to be tried in a Jewish court for an alleged offense against Jewish law. Later, when Paul was being tried before the Sanhedrim, and was in danger, he was rescued by the Roman soldiers only because he was a Roman citizen, and therefore entitled to trial before a Roman tribunal (*Acts* xxiii:

10, 27; xxiv: 6, 7). Under Roman conquest, a nation was usually made merely tributary at first, and lost its autonomy by slow degrees. British rule in India furnishes an illustration of the same policy of gradual assimilation and absorption.

In now proceeding to a discussion of the legality and regularity of the arrest of Jesus, and of his subsequent trial before the Sanhedrim, it scarcely need be said that the proceedings must be viewed from a Jewish standpoint. It would be idle to dispose of the subject in the disposition of mind that Jesus, being the Christ, could not be lawfully arrested or condemned for anything. Though this be true in itself, still the Jews did not believe, much less know, that they were prosecuting their Messiah. In fact, Jesus did not answer at all to the idea or conception of the Messiah which existed in the Jewish mind, and was the source of the firm faith in the Hebrew people of the future triumph of their polity and nation. That polity embraced in its dual scope, spiritual and worldly hopes, expectations and aspirations alike; it was spirituality and temporality intermingled. In the theocratic system of the Jews, the high priest was the head of the state. There was no conception of a kingdom of heaven, or of spiritual welfare, as separate or distinguished from an earthly kingdom, or temporal prosperity, but on the contrary they were one. Hence the Jews could not associate the Messiahship with one who came merely calling sinners to repentance, and proclaiming that his kingdom was not

Judge Gaynor's Address

of this world. Through all their past vicissitudes, Jehovah had raised up prophets and divinely inspired leaders, who had guided and led them through their escapes, conflicts and triumphs; and the yet greater prophet to come, the Christ, was, according to their conception (the only one they ever had from the beginning), to have a similar mission. Being under the galling yoke of Rome when Jesus came, this idea was strong within them.

The arrest of Jesus was not at the instance of any formal accusation, which was a prerequisite to a legal arrest under Jewish law, but was brought about by a conspiracy of the members of the Sanhedrim, his judges; namely, the high priest, the chief priests, elders and scribes. Accompanied by his immediate disciples and friends, Jesus had journeyed up from Galilee to Jerusalem to participate in the solemn feast of the Passover. He had taught all along the way, drawing to him followers from among the devout throngs wending their way to Jerusalem for the same purpose; so that on the first day of the week in which he was crucified, he entered Jerusalem in a triumphal manner in the midst of a great retinue filled with religious enthusiasm which he had inspired.

His fame had preceded him. He had stirred up the people, "teaching throughout all Jewry, beginning from Galilee to this place" (Luke xxiii: 5). He straightway went to the temple, and there daily continued to teach openly. He was a reformer, and against the existing order of things. He publicly denounced

the ruling class as "hypocrites," a "generation of vipers," and the like, and warned the people to "beware" of them. He could not abide their cattle-selling and money-changing in the temple itself. He exposed their hypocrisy, greed and corruption. He abhorred the use they were making of official position and the laws to enrich themselves and oppress the people. He silenced and humiliated them in public discussion when they sought, as Matthew says, to "entangle him in his talk" (xxii: 15). The following of Jesus was large, and growing rapidly. The authorities were filled with envy, hate and fear of him, and sought to destroy him; but when they menaced him in public, they feared the people, and had to refrain lest a tumult arise (Matthew xxi: 46). They were afraid to proceed against him openly. "Then assembled together the chief priests, and the scribes, and the elders of the people, unto the palace of the high priest, who was called Caiaphas, and consulted that they might take Jesus by subtilty and kill him" (Matthew xxvi: 3). Jesus had taken the precaution of withdrawing outside of the city each night with the chosen 12, and of sleeping out of doors, though in the daytime he felt safe even in the temple. Those who attribute his action in this particular to his being unable to get accommodation in the city, owing to the great throng attending the feast, overlook the fact that there must have been many roofs in Jerusalem under which Jesus would have been an honored guest; for his followers, though generally poor or of moderate

Judge Gaynor's Address

means, were intelligent and respectable people, such as have always unselfishly encouraged efforts for wholesome reforms, and helped their day and generation forward. But "one of the twelve" was corrupted by the chief priests to betray him, and after dark led a multitude with swords and staves to his place of concealment to take him; and with this multitude Luke actually associates members of the Sanhedrim, namely, chief priests and elders (xxii: 52), so eager were they to get him in their power. The fourth gospel is alone in seeming to mention a band of Roman soldiers as participating in the arrest (xviii: 3, 12). The three synoptic gospels give no such account, and it is difficult to see how it can be correct, for if Jesus had been arrested under Roman authority it would have been for an alleged offense against Roman jurisdiction and government in the province, and he would have been brought before a Roman magistrate. Moreover, subsequent events show that the Roman authorities were not instrumental in placing Jesus in the power of his enemies. On the contrary, they sympathized with Jesus.

With the disposition which I have described prevailing against him in the minds of his judges, Jesus was about to be brought to trial before them. Of course it need not be said, that being thus prejudiced, they were not fit to try him. But the fact of their prejudice, and that notwithstanding it, they sat in judgment upon him, is not singular or unique in the world's history. The judicial wrongs and murders of every

Classics of the Bar

civilization and age need not be cited to dispel any dissent to this statement. And the result of such trials has always been the same. Whether the accused was guilty or innocent, the conviction has always proved more injurious to social order than acquittal would have been. In the administration of justice, it is quite as important that justice appear to be done as that it be done.

Although it was nighttime, the three synoptical gospels agree that Jesus was straightway led away to the high priest Caiaphas at his palace, where, as the first two say, the other members of the Sanhedrim, namely, the chief priests, elders and scribes, were assembled with him (Matthew xxvi: 57; Mark xiv: 53; Luke xxii: 54). Luke's gospel does not directly say that the members of the court were assembled, but inasmuch as it says, as has been seen, that the chief priests and elders were present at the capture, it follows from the narrative that they were present at the high priest's house. It does not, however, give any proceedings of the court as occurring during the night. John's gospel says that Jesus was first taken before Annas, the father-in-law of Caiaphas (xviii: 13). This is not improbable, though none of the other gospels mentions it, for although Annas had been deposed from the office of high priest by Valerius Gratus, Pilate's predecessor, and another placed in his stead (Josephus, book xvii, chapter 2, sub. 2), the Jews undoubtedly continued to regard him as *de jure* high priest, and recognized his authority, although in deal-

ing officially with the Roman authority, or in matters in which its concurrence or sanction was necessary, the high priest recognized by that authority had to act. This better accounts for the apparent error in the chronological passage in Luke's gospel fixing the time of the coming of the Baptist, namely, that in the 15th year of the reign of Tiberius Cæsar, Pontius Pilate being governor of Judea, Annas and Caiaphas were the high priests (iii: 1, 2), than to attribute to the writer of that gospel, as Strauss in his life of Jesus does, the ignorance of supposing there could be under Jewish law and government two high priests at the same time. John's gospel is silent as to members of the court being present, and it is not altogether clear whether it means that the proceedings which it gives were before Annas or before Caiaphas. After saying that Jesus was taken before Annas, and then narrating the proceedings, it says in consecutive order that Annas sent Jesus bound to Caiaphas (xviii: 24). The erroneous translation of this verse in the King James version helps to make it plain that such proceedings were before Caiaphas. The reading there is: "Now Annas had sent him bound unto Caiaphas, the high priest," which implies that what preceded had occurred before Caiaphas after Jesus had been so sent before him by Annas. The recent revised version is: "Annas therefore sent him bound unto Caiaphas, the high priest"; and the concededly literal, though not classic, Douay version is: "And Annas sent him bound to Caiaphas, the high priest." The agreement between these two

versions where they differ from the King James version is notable. But the account in this beautiful gospel of John, which was obviously intended by its author whoever he was, more as a pious and mystical composition than as a complete record of events, cannot be taken into full account as against the other gospels. The circumstantial narratives of the first two gospels must govern. They agree that Jesus was formally tried during the night of his arrest before the high priest and other members of the Sanhedrim assembled in his palace. The witnesses against him were examined openly in his presence, and then he was called upon to answer. It is to be assumed that a quorum was present, for there is no reason to suspect otherwise, and that the court had jurisdiction is beyond doubt.

It is plain from each of the gospel narratives, that the alleged crime for which Jesus was tried and convicted was blasphemy; an offense for which individuals are also prosecuted in our time, although that which is blasphemy in one age often ceases to be such in a following age. Jesus had been claiming supernatural power, which in a human being was blasphemy. It was for this that the Jews had sometime before taken up stones against him as he was teaching: "For a good work we stone thee not; but for blasphemy; and because that thou being man makest thyself God" (John x: 33).

Under the Jewish system of procedure the charge against an accused was not reduced to a formal writing. It rested in the testimony of the accusing wit-

nesses; a simple method which has its advocates to-day, as preferable to technical written indictments, under which many criminals have secured acquittal for a variance between the proof and the indictment. The first gospel says that when Jesus had been brought before them, "the chief priests and elders and all the council sought false witness against Jesus" (xxvi: 59); the second does not say they sought false witness, but simply that they "sought for witness" (xiv: 55); but even the spectacle of judges seeking for witnesses against one arrested without accusers is shocking. The first gospel says they found none; "yea, though many false witnesses came, yet found they none." The second says they found none, "for many bare false witness against him, but their witness agreed not together." The first then says: "At the last came two false witnesses and said, This fellow said I am able to destroy the temple of God, and to build it in three days." The second correspondingly says: "And there arose certain, and bare false witness against him, saying, We heard him say, I will destroy this temple that is made with hands and within three days I will build another made without hands"; and then adds: "But neither so did their witness agree together." The first gospel makes no claim that the two who came at the last did not agree together; it simply says they were false witnesses. The second says they were false, and further that they did not agree together. But it states just what the witnesses said, from which they appear to have substantially agreed. Nor can the

statement that they were false witnesses be taken in the literal sense. As a matter of fact, the Johannine gospel relates that Jesus had made such an assertion while teaching in the temple (ii: 19), but it says "he spake of the temple of his body"; which, however, not only the Jews, but evidently his own disciples, did not perceive, for it is added that the latter "remembered" it when he was risen from the dead. The Jews had asked him for a sign, and for answer, standing there in the temple, he exclaimed: "Destroy this temple, and in three days I will raise it up." The answer of the Jews, "Forty and six years was this temple in building, and wilt thou rear it up in three days?" shows what was their understanding of the words of Jesus, and he does not seem to have disclaimed the meaning they attributed to him. The question whether the witnesses were literally false, turns not upon what Jesus meant, but what he said. That the offense of which, as well as the particular testimony upon which Jesus was convicted, was generally known, is shown by the raillery of those who passed by as he hung upon the cross: "Thou that destroyest the temple and buildest it in three days, save thyself and come down from the cross" (Mark xv: 29; Matthew xxvii: 40).

The said two synoptic gospels which give the particulars of the trial unite in saying that upon the close of the evidence against Jesus the high priest, who presided over the court, said to him: "Answerest thou nothing? What is it which these witness against thee?" This was the usual call upon the accused to

put in his defense. But it was a travesty upon justice to require him to make his defense without giving him time to prepare it. The same thing has often happened since, however, and occasionally happens now. Jesus held his peace and poor humanity also has often held its peace since under like circumstances. At the end of the hearing the high priest adjured Jesus to say whether he was the Christ, to which he answered, according to the first gospel, "Thou hast said"; according to the second, "I am," and according to the third, "Ye say that I am," the fourth having nothing upon the subject; and the first two saying that he added that thereafter they would "see the Son of Man sitting on the right hand of power and coming in the clouds of heaven," which seems to have been a combined reference to and quotation from three different scriptures (Daniel vii: 13, Psalms viii: 4, cx: 1). Thereupon the high priest rent his clothes and exclaimed: "What further need have we of witnesses? Behold, now ye have heard his blasphemy. What think ye?" Then they all adjudged him "guilty of death." It has been said that Jesus was thus made to witness against himself, and that he was convicted upon his own testimony, which was contrary to Jewish law. But this view does not seem to be wholly correct. Two witnesses, the requisite number, having given evidence against him, it would be exaggeration to say that he was convicted wholly upon his own confession, if it might be surmised that he would not have been convicted without it.

The narratives of the synoptic, or first three, gospels agree that the next morning the Sanhedrim again formally met and took final action in the case; "took counsel against Jesus to put him to death" (Matthew xxvii: 1, Mark xv: 1, Luke xxii: 66). The third gospel mentions as taking place at this morning session proceedings which the other two assign to the previous night, namely, the closing adjuration and judgment scene. The case was quite obviously adjourned to the morning, to the end that Jesus could be formally adjudged guilty then, for, as we have seen, in a capital case a judgment of conviction could not be rendered the same day the trial was concluded. As we have also seen, it was illegal to hold the trial in the nighttime. The legal course for the authorities to have followed when Jesus was arrested, was that taken by them in the case of Peter and John when they arrested them not long afterward, and "put them in ward until the morrow, for it was now eventide" (Acts iv: 3, revised version). But if they had deferred the trial till next day, they could not have given judgment of conviction upon that day, and the day after that being the Sabbath, upon which they could not sit at all, they would have had to wait over it also. Being in this dilemma, in their haste for the trial and conviction, they justified themselves by some casuistry to hold the trial upon the night of the arrest, which would enable them, with some claim of regularity, to pronounce the judgment as they did the next day.

Judge Gaynor's Address

If I were to express formal conclusions, they would be: (1) That the arrest was not legal, there being no accuser; (2) that the charge constituted a defined criminal offense, and was therefore one upon which a person could be legally convicted; (3) that the court was lawfully constituted and had jurisdiction; (4) that the trial was precipitate and not conducted fairly; (5) that it was unlawfully held in the nighttime; (6) that the judgment was supported by evidence the sufficiency of which the court had the right to pass upon; (7) that it was an unjust judgment, given by judges so prejudiced against Jesus as to be unfit to try him.

It only remains to consider the part of Pilate in the world's greatest tragedy. When the Jewish court had condemned Jesus to death, the next step was to have the sentence executed. For that purpose it was necessary then, just as it is with us now, to turn the condemned over to the executive authority. The judicial authority renders judgment, but the executive authority carries it out. The executive power in Judea was in the Roman governor. Therefore, after formally condemning Jesus at the morning session of the Sanhedrim, the high priest, the chief priests, elders and scribes, who constituted the court, delivered Jesus over to Pilate to put him to death. "And when they had bound him they led him away, and delivered him to Pontius Pilate, the governor" (Matthew xxvii: 2). Up to this point Roman authority had nothing to do with the matter. Pilate was now reluctant to sanc-

tion and carry out the judgment of the Jewish court. He of course knew what had been going on, and he looked upon Jesus as an innocent man, persecuted from bigotry, envy and hate by the ruling class of his own race, against whose conduct he had been outspoken. Pilate had heard much of Jesus, admired his honesty and courage, and was disposed to save him. He cared nothing for his teachings, but Jesus had made a great stir in the Jewish world, and curiosity to see and converse with him, and a sense of fair play in his behalf, were evidently aroused in Pilate. If instead of Jesus it had been some ordinary criminal, condemned by the Sanhedrim at its morning session, who had been brought to Pilate, there would have been no parleying, but the approval and execution of the judgment would have been a mere matter of executive routine. The Jewish authorities wanted the same course followed, and without delay, in the case of Jesus. They had not come to Pilate to accuse Jesus and have him tried according to Roman law and procedure. This is made manifest by their sharp answer to Pilate's inquiry what the accusation against Jesus was, namely: "If he were not a malefactor we would not have delivered him up unto thee" (John xviii: 30). This was in effect saying: "We have tried and condemned him, and that is enough; it is not for you to ask what he is guilty of, or whether he be guilty; we are not asking you to try him; give the order for his execution."

There is no foundation for saying there was a trial before Pilate. There was not even a witness exam-

ined. The jurisprudence of Rome knew of no such trial as that. Pilate knew as well as his successor, Festus, did, when Paul, having claimed the rights and protection of a Roman, was accused before him afterward, that it was "not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have license to answer for himself concerning the crime laid against him" (Acts xxv: 16). Jesus not being a Roman citizen, was not able to claim the privilege of one, like Paul, and was therefore not tried before a Roman court.

Pilate had the power, like our governor, to grant a pardon. He had also an additional responsibility. The judgment could not be executed without his approval of it. Though the jurisdiction of the Sanhedrim to try and even give judgment of death was left undisturbed by the Romans, yet the judgment could not be carried out without the sanction of the Roman governor, for the absolute power of life and death in the native authorities was deemed too incompatible with Roman supremacy to be allowed, and had been taken away (John xviii: 31). The conduct of Pilate was weak and vacillating. According to the third gospel, in his perplexity he seized upon the mention of Galilee, and learning that Jesus was from that place, he sent him before Herod, tetrarch of Galilee, and murderer of John the Baptist, who happened to be in Jerusalem at the time (Luke xxiii: 6). This episode seems extraordinary in itself, and no mention is made of it in any of the other gospels. That Herod sent Jesus back was to

be expected, for he had no jurisdiction whatever in the case.

Being an educated and enlightened man, and knowing that Jesus was the innocent victim of bigotry, envy and hate, Pilate nevertheless yielded to the demand of the Jewish authorities, and delivered him over, not to them, as the fourth gospel is alone in saying (xix: 16), but to his own soldiers to be put to death; and he was put to death not in the way of the Jews, by stoning, but after the manner of the Romans, namely, by crucifixion. The idea that Pilate tried and condemned Jesus, and was wholly responsible for his death, has been fostered by the sentence in the Apostles' creed, "Suffered under Pontius Pilate," which, however, is only a chronological statement, meaning under or during the rule or governorship of Pilate. Having the power and the right to save Jesus, and knowing that he ought to, Pilate failed to do so, and to this extent he may be justly held accountable for his death.

And thus was the destruction of Jesus wrought; and even in this hour, as we see him hanging from the cross upon the hill called Golgotha, we still hear his death cry, so human in its awful and pathetic woe, that human hearts continue to yearn and sob over it as coming from a divine heart: "My God, my God, why hast thou forsaken me!"

Though the Jewish people have been unable to recognize Jesus as the Christ, they have since come to fully realize that through the selfish bigotry and intolerance of the so-called leading men among them,

Judge Gaynor's Address

the purest and loftiest character their race has ever produced was unjustly put to death. Who has not observed that hushed and mournful note, like the sighing of the wind through pine tops, which this feeling has caused to vibrate among them! It could not be otherwise with a race as finely strung as the finest stringed instrument, as their literature and history show them to be. They feel as did Renan, also a disbeliever in the divinity of Jesus, in finishing his life of Jesus: "There never was but one Jesus, and there never will be another."

I cannot more fittingly close than with that noble apostrophe to Jesus by Renan:

Repose now in glory, noble founder! Thy work is finished, thy divinity established. At the price of a few hours of suffering which did not even reach thy grand soul, thou hast bought the most complete immortality. Between God and thee there is no longer any difference. Complete conqueror of death, take possession of thy kingdom, whither there shall follow thee by the royal road which thou hast traced, ages and ages of worshippers.

Ben Hardin's Reply to Prentiss

IN the preceding volume of this work is contained an account of the Wilkinson trial which occurred at Harrodsburg, Ky., many years ago, together with the brilliant speech of that child of genius, Sergeant S. Prentiss, for the defense. The case was a charge of murder against Judge E. C. Wilkinson, his brother, Dr. B. R. Wilkinson, and Mr. John Murdaugh, a lawyer, all of whom were from Mississippi, and visiting at Louisville, Ky., at the time of the difficulty which resulted in the death of two persons.

The far-famed Ben Hardin appeared in the case for the prosecution. Prentiss referred to him as "one of the ablest lawyers of this country, or of any country."

Lucius P. Little, in his "Life and Times of Ben Hardin," says of him: "His talents were so dissimilar to those of his distinguished rivals and colleagues that contrasts and comparisons are vain. While there is no one found with whom to compare him, yet it may be that the rugged virility of his intellect bears more than a fancied resemblance to that of the late Jere Black, and that both in many of their characteristics, and especially in a certain mental and moral manhood,



Ben Hardin.

Ben Hardin's Reply to Prentiss

are of the class whose best type was the great Scotch philosopher, Thomas Carlyle."

As an illustration of Hardin's wonderful power over a jury, even when the evidence was overwhelmingly against him, may be mentioned a case tried in Marion County, Ky., in which a man was indicted for keeping what was called a "Spanish needle." The case was clearly made out against the defendant. Hardin argued to the jury that the punishment was too violent and disproportionate to the offense and was cruel and inhuman. The jury brought in this verdict: "We, the jury, find the defendant not guilty; for, although we know he played the wheel, we consider the punishment cruel, extravagant, and disproportionate to the offense." Judge Green sent them back and they again returned with this verdict: "We the jury know the man kept the wheel, but in our consciences we do not believe him to be guilty under the Constitution." They were sent back again, and on the fourth day returned with an unqualified verdict of not guilty.

When it became known that Hardin was to prosecute and Prentiss defend in the trial at Harrodsburg, intense interest was manifested and many people came from distant points to see and hear these masters of the forensic art.

When the case was called for trial, Prentiss had not yet arrived from Washington where, as a member, he had attended the session of Congress just then ad-

Classics of the Bar

journeyed. He did not arrive until the striking of the jury had been completed. "During this delay," says Prentiss's biographer, "great was Wilkinson's anxiety, the more especially as Ben Hardin, the Achilles of the Kentucky bar, had been engaged to prosecute; he feared Hardin's power over a Kentucky jury." Prentiss arrived, however, before the taking of testimony began. Hundreds of people lined the streets to catch a glimpse of him. As Hardin saw him alight from the hack, he remarked, "I know now what I've got to meet."

The evidence was completed in three days, the arguments in two. In all, seven speeches were made to the jury. Prentiss preceded Hardin in the order of argument.

As Mr. Prentiss's address to the jury is given in full in Volume I of this compilation of some of the classics of the bar, it may be that no part of it should be given here. However, in behalf of those who may not yet have read the speech, we have been tempted to give the following extract from it, that the style of his oratory may be seen, and we are trusting to the reader's heart, where the 'milk of human kindness' flows, for pardon if the slight repetition be adjudged an error.

The principles of self-defense, which pervade all animated nature, and act toward life the same part that is performed by the external mechanism of the eye toward

Ben Hardin's Reply to Prentiss

the delicate sense of vision—affording it, on the approach of danger, at the same time, warning and protection—do not require that action shall be withheld till it can be of no avail. When the rattlesnake gives warning of his fatal purpose, the wary traveler waits not for the poisonous blow, but plants upon his head his armed heel, and crushes out at once “his venom and his strength.” When the hunter hears the rustling in the jungle, and beholds the large green eyes of the spotted tiger glaring upon him, he waits not for the deadly spring, but sends at once through the brain of his crouching enemy the swift and leaden death.

If war was declared against your country by an insulting foe, would you wait till your sleeping cities were wakened by the terrible music of the bursting bomb? till your green fields were trampled by the hoofs of the invader, and made red with the blood of your brethren? No! you would send forth fleets and armies; you would unloose upon the broad ocean your keen falcons; and the thunder of your guns would arouse stern echoes along the hostile coast. Yet this would be but national defense, and authorized by the same great principle of self-protection, which applies no less to individuals than to nations.

But Judge Wilkinson had no right to interfere in defense of his brother; so says the commonwealth's attorney. Go, gentlemen, and ask your mothers and sisters whether that be law. I refer you to no musty tomes, but to the living volumes of Nature. What! A man not permitted to defend his brother against conspirators? against assassins, who are crushing out the very life of their bruised and powerless victim? Why, he who would

Classics of the Bar

shape his conduct by such a principle does not deserve to have a brother or a friend. To fight for self is but the result of an honest instinct which we have in common with the brutes. To defend those who are dear to us is the highest exercise of the principle of self-defense. It nourishes all the noblest social qualities, and constitutes the germ of patriotism itself.

Why is the step of the Kentuckian free as that of the bounding deer? firm, manly, and confident as that of the McGregor when his foot was on the heather of his native hills and his eye on the peak of Ben Lomond? It is because he feels independent and proud; independent in the knowledge of his rights, and proud in the generous consciousness of ability and courage to defend them, not only in his own person, but in the persons of those who are dear to him.

It was not the blood that would desert a brother or a friend which swelled the hearts of your fathers in the "olden time," when in defense of those they loved they sought the red savage through all the fastnesses of his native forest. It was not such blood that was poured out, free as a gushing torrent, upon the dark banks of the melancholy Raisin, when all Kentucky manned her warrior sires. They were as bold and true as ever fought beneath a plume. The Roncesvalles pass, when fell before the opposing lance the harnessed chivalry of Spain, looked not upon a braver or a better band.

Kentucky has no law which precludes a man from defending himself, his brother, or his friend. Better for Judge Wilkinson had he never been born than that he should have failed in his duty on this occasion. Had he acted otherwise than he did, he would have been ruined

Ben Hardin's Reply to Prentiss

in his own estimation and blasted in the opinions of the world. And young Murdaugh, too; he has a mother who is looking even now from her window, anxiously watching for her son's return; but better, both for her and him, that he should have been borne a bloody corpse to her arms than that he should have carried to her, unavenged, the degrading marks of the accursed whip.

But there was danger, as well as degradation. Their lives were in imminent hazard. Need I dwell longer upon this point? Need I say that the defendants are no murderers? that they acted in self-defense, and took life from necessity, not from malice?

But there is a murderer; and, strange to say, his name appears upon the indictment, not as a criminal, but as a prosecutor. His garments are wet with the blood of those upon whose deaths you hold this solemn inquest. Yonder he sits, allaying for a moment the hunger of that fierce vulture, conscience, by casting before it the food of pretended regret, and false but apparent eagerness for justice. He hopes to appease the manes of his slaughtered victims—victims to his falsehood and treachery—by sacrificing upon their graves a hecatomb of innocent men. By base misrepresentations of the conduct of the defendants, he induced his imprudent friends to attempt a vindication of his pretended wrongs by violence and bloodshed. His clansmen gathered at his call, and followed him for vengeance; but when the fight began, and the keen weapons clashed in the sharp conflict—where was this wordy warrior? Aye, "Where was Roderick then?" No "blast upon his bugle horn" encouraged his companions as they were laying down their lives in his quarrel; no gleam of his dagger indicated a desire to avenge their fall; with treach-

Classics of the Bar

erous cowardice he left them to their fate, and all his vaunted courage ended in ignominious flight.

Sad and gloomy is the path that lies before him. You will in a few moments dash, untasted, from his lips the sweet cup of revenge; to quaff whose intoxicating contents he has paid a price that would have purchased the goblet of the Egyptian queen. I behold gathering around him, thick and fast, dark and corroding cares. That face which looks so ruddy, and even now is flushed with shame and conscious guilt, will from this day grow pale, until the craven blood shall refuse to visit his haggard cheek. In his broken and distorted sleep, his dreams will be more fearful than those of the "false, perjured Clarence"; and around his waking pillow, in the deep hour of night, will flit the ghosts of Rothwell and of Meeks, shrieking their curses in his shrinking ear.

In this strain Prentiss spoke for two hours. Hardin, in his address to the jury, referred to Prentiss's speech as "that able speech which you have all heard and admired, and which, it must be admitted, like a West India tornado, swept through this house, carrying everything before it, even to the reason of many who heard it."

Hardin exerted every energy of his nature, every power of his being, and drew upon every resource of his life in a masterly effort to break the force of Prentiss's powerful plea. To what extent he was successful is left for the reader to determine.

Speech of Mr. Hardin

I SHALL, gentlemen, very humbly and very cordially congratulate you upon having this case brought so near a close. It has already been protracted beyond the usual limits of criminal trials by the extraordinary ingenuity and uncommon array of talent enlisted on the occasion. The gentlemen on the opposite side have felicitated you upon the politeness of your patience, and, among others, I, too, return you my thanks for your attention.

I little expected when I engaged in this cause in Louisville last winter that I should ever have to address you on the subject. Although I have been fifty years practicing at the Kentucky bar, this is the first time I have ever addressed a jury here, and I cannot help feeling that I am as much a stranger here as any gentleman who has addressed you. I shall, however, in speaking to you, apply myself to an exposition of the facts and of the law, bearing upon them; and whatever may be your feelings, you will, I am sure, keep in mind that you are bound to exercise your reason, and that you owe a duty of no ordinary responsibility to yourselves, your characters, and your country. That duty is a sacred trust reposed in you which you cannot weigh lightly without injury to yourselves as well as wrong to others. Nor must you surrender your reason to your passions, and allow yourselves to be carried away by the shouts of applause from a

Classics of the Bar

fashionable audience, as if you were in a theater where a Junius Brutus Booth and a Miss Ellen Tree exhibit the practiced arts of controlling the feelings and successfully eliciting the noisy plaudits of excitement. This is not a theater; this trial is not a farce; nor are you seated on those benches for amusement. This, gentlemen, is a solemn court of justice, a solemn tribunal in which your judge, presiding with becoming dignity, represents the majesty of the law, and in which you are expected to deliberate with becoming gravity upon circumstances of awful import. The appalling death of two fellow-creatures is the occasion of your being here assembled, and the guilt or innocence of those at whose hands they fell is the object of your solemn investigation.

Even though I knew I should have to address a jury of strangers, and an assemblage to whom I am personally unknown, I little anticipated that I should have to make a speech to any other audience than that usually to be found in our halls of justice. But my friend, Colonel Robertson, whose youth and warmth, in that way, urge him to precedence, has taken me by surprise, and placed before me a galaxy of beauty and fashion which might well deprive me of my presence of mind if I were not fortified with less of the ardor of youth in my veins than himself, and were I not less practiced in those graces of person and manners which he can so successfully play off to woo and win their fascinating smiles.

By law, and in conformity with the original institu-

Speech of Mr. Hardin

tions upon which all law is founded, this trial was to have taken place where the occasion of it occurred—in the county of Jefferson. The Legislature, in its wisdom, has thought fit to change the venue from Jefferson to Mercer County; but why, I am unable to say. For even Colonel Robertson, the very able counsel for the defense, has admitted that, although for a time great excitement existed in Louisville, yet, after the investigation at the examining court, that excitement was altogether allayed. In this country experience has always taught us that when a change of venue is sought, the object is not to obtain justice, but to evade it. The object is to thwart and embarrass the prosecution and multiply the chances of eluding the responsibility of the law. How is this effected? Is it not by a removal to some place esteemed favorable to the accused, by a removal so distant from the scene of action that the expense and inconvenience render it probable that but few of the witnesses can attend? By a removal to where witnesses of a character dubious, if not infamous, where known, may find credit because they are unknown? Here we are some seventy or eighty miles from the stage on which this tragedy was acted, yet we are asked why we did not bring the stick and the cowhide, and Bill Holmes, the pilot, as if we would be afraid to produce them were they within our reach. I would ask the opposite side, in my turn, why gentlemen have brought us eighty miles from the scene of action where we could have elicited the truth in every particular? I listened

Classics of the Bar

yesterday with great pleasure to Colonel Robertson, whose speech was very good, and evinced as much of the fire of youth as the flowers of rhetoric; but I cannot say it was much calculated to convince the understanding that the "worse can be made to appear the better cause."

I also listened with great pleasure to Mr. Prentiss, who addressed you yesterday, and in part to-day, and I must say that, although there were in his speech some things which I could not approve and many deductions which I could not admit, yet, on the whole, it was an oratorical effort which I could not help admiring. However, Mr. Prentiss really astonished me with one proposition he laid down with respect to the common law of this country, that every man is to judge for himself where the point of danger lies that entitles him to disable another, or to kill him, lest he might, in turn, by possibility, become the killed; so that, in fact, if it were so, the point of danger could never be defined by law, because what a brave man would consider no danger at all, a timid man would consider the point of danger bristling with a thousand deaths. Was there ever such a monstrous doctrine recognized by the laws of any community?

(At this point Mr. Prentiss interrupted Mr. Hardin and said that he had only urged that what might be considered by one, as a reasonable man, from apparent circumstances, the point of danger, where resistance was necessary for his own preservation, would be lawful grounds for justifiable homicide.)

Speech of Mr. Hardin

[Mr. Hardin:] I will come to that in due time. The dilemma cannot be removed, that the same point, according to this doctrine, is, and is not, the point for resistance contemplated by the law. No, gentlemen; the law recognizes no such absurdities. The law was laid down yesterday correctly by the district attorney, that when the killing of a man has taken place, it is murder in the eyes of the law, and must be pronounced by the law to be a murder till the contrary is shown. What, then, becomes of this new doctrine, unknown to the law, that the slayer, and not the law, is to judge and presume the justification? The law itself says the killing of one man by another is murder. The slayer, according to Mr. Prentiss, says: "Oh, no, I killed my man because I fancied he would kill me; it is not murder, it is justifiable homicide!" Yet, the law again says, if a sheriff, who hangs a man by lawful authority, in doing so commits only a justifiable homicide, should, even for the best of motives, instead of hanging the man, as bound to do, chop his head off with a sword, though death must necessarily follow either way, yet he is guilty of murder, and liable to the punishment for the killing contrary to the prescribed mode of his duty.

There are certain maxims of the law laid down in the books which are never disputed, because they are founded upon reason and just principles; such, for instance, as these: If A kill B from necessity, to save his own life, the danger being undeniable, it is excusable homicide. If A kill B in a sudden heat of quarrel,

Classics of the Bar

it is manslaughter. If A kill B without what, in law, is called a competent provocation, it is murder. If a man fire a pistol-ball into that crowd and kill a man, though it were his bosom friend, against whom, personally, he could have no previous malice, it is murder, though he did not intend that death. It is murder in the eye of the law, because the recklessness of human life implied in the rashness of the act shows that general malice toward mankind which is equally dangerous to the community as any private malice could be.

All killing is murder, unless a good excuse is shown, but words are no cause, because they never bring a killing below the crime of murder; neither are indecent and contemptuous actions justification, according to Raymond and Blackstone. Here is a maxim in point: If there is a previous quarrel between A and B, and some time after, in consequence of the previous quarrel, they fight—then nothing connected with the previous quarrel justifies a killing, and it cannot be excused unless it clearly appear that B, in killing A, had to do so to save his own life.

The application must be made to the fight at the tailor's shop, and this answers the question why we have introduced evidence in the proof of the first affray. There is one principle of law which I may as well now call your attention to as at any other time.

When men act together, and by consent, it is no matter who gives the wound causing death, they are

Speech of Mr. Hardin

all guilty in the eye of the law of the offense, whatever it may be.

And in relation to that sort of wound—if a man receive a wound not of a dangerous nature, but by gangrene or consequent fever death ensues, it is murder or manslaughter, as the case may be, as much as if the wound itself had been mortal at the instant.

Mr. Prentiss labored a position, and labored it ably, I admit; but Mr. Bullock had previously combated its application successfully. The position is advanced upon the well-known quotation from Lord Hale:

If A, B, and C be walking in company together, and C assault B, who flies and is in danger of being killed from C's pursuit unless present help be afforded, and A thereupon kill C in defense of the life of B, it seems that in this case of such inevitable danger of the life of B the killing of C by A is in the nature of self-defense; but it must plainly appear by the circumstances of the case as the manner of the assault, the weapons with which it were made, etc., that B's life was in imminent danger.

A man seeing another kill a third person may kill the man about to commit the felony, but then it is at his peril he does it, and he is responsible to the law for his interference. Upon this text, if you are to acquit Judge Wilkinson it must be apparent that when the stabbing took place there must have been manifest danger of his brother's life; there must have been an apparent, an absolute, necessity. To show that there was no such necessity, and to place before you a clear

Classics of the Bar

view of the leading features of the facts, I will now claim your attention to the review I shall make of them.

Mr. Redding keeps what is called a merchant tailor's shop on Main Street, in Louisville. His store is not far below the Galt House, on the opposite side.

These three gentlemen now arraigned before you are residents of the State of Mississippi, and formerly, as I am informed, were residents of the State of Virginia, and, for aught I know, of the same county, town, or village. They came to Kentucky early in December, for what is of no importance that I can see, although it is made to cut a conspicuous figure here as a favor conferred on Kentucky—a contemplated marriage at Bardstown. They arrived at the Galt House. Where Judge Wilkinson had his clothes made up, if he had any prepared for the occasion, is not shown. Where Mr. Murdaugh had his made, if any, is not shown. But it was shown that Dr. Wilkinson was to have his clothes made at Redding's. They were made with great punctuality, and the Doctor came to Redding's store at the appointed time. He tried on the new coat, and seemed well pleased with it. So satisfied was he with the coat that he wore it on the spot, and left a one-hundred-dollar bank bill on account of payment, requesting Mr. Redding to hold over the bank bill, which was of a Mississippi bank, till some expected change for the better took place in the rates of discount. Dr. Wilkinson then went away, wearing the coat, and desiring the other things to be sent to

Speech of Mr. Hardin

the Galt House. As I now come to where it will be necessary for me to mention the names of the witnesses, I beg it to be understood that I do not mean to avail myself of the example set by the opposite side. I will not shelter myself behind my professional duty, to villify an unfortunate witness, disarmed of his self-defense—unfortunate, because of his inability to make any reply in the same public court in which he is maligned. Younger gentlemen at the bar than I am may indulge in the practice, and, perhaps, the rashness of youth and inexperience may excuse what wisdom and manliness could not justify. No character, however spotless—no reputation, however unstained before—can escape the sullying hand wantonly raised to tarnish it, where there is no immediate opportunity of wiping away that which corrodes while it damps the luster.

When Dr. Wilkinson returned to Redding's store, accompanied by his brother and Mr. Murdaugh, some objection was made to the collar of the coat. It was no serious objection, we may suppose, for we hear from Mr. Prentiss himself, "the expectancy and rose of the fair State," that he, perhaps, would not have been quite so fastidious. Perhaps some young fellow like my friend Colonel Robertson, "the glass of fashion and the mold of form," might have been a little squeamish; but, for myself, every one knows I am not particular. I never should have knocked down a tailor with an iron poker because there was a shade of fashion lacking in the collar of my brother's coat.

Classics of the Bar

The whole thing is a matter of taste, the poker included.

There was, however, some objection to the fashion of the coat—and that objection was thought grave enough to enlist the triple wisdom of a dignified judge of the land, an eminent doctor of a distant State, and a sage member of the Mississippi bar. Yes, with this formidable array of judicial wisdom, pharmaceutic skill, and legal research, these three gentlemen came to a little store in Louisville, to fight a poor tailor! And all about an unfashionable twist in the collar of a coat.

To be sure they came from the Eldorado of the South, with their thousands of bales of cotton condensed into their pockets. They were perfect magnets of attraction, for the secret of their loadstone lay wrapped up in their Mississippi bank notes. Hotel keepers were bowing to them on all hands; tradesmen and storekeepers honored the pavement they trod; and as to tailors—I am ready to believe they became perfectly fascinated with them. Nay, I even make no doubt that the keepers of watering establishments and medical springs submitted to the soft impeachment, and became devoted to their interests. It is the necessary consequence of the influence of cotton bales.

Here was a hard-working tailor, ever on the watch for good customers, bowing to them as assiduously, if not more assiduously, than the hotel keepers or spring doctors, taking back his coat, I have no doubt, with tears in his eyes; but is it reasonable to suppose that, fascinated as he was by the ability of such customers

Speech of Mr. Hardin

to pay, he would be so blind to his own interests as to give unprovoked quarrel to such customers? However backward he may have been from prudence and circumstances, it seems there was no want of readiness to carry matters with a high hand on the part of those with whom he was dealing.

Judge Wilkinson is sitting on a stool at the stove, and when he sees his brother about to pay for the pantaloons and vest, he interferes, without being called upon to do so, and opposes the payment for these things, upon which the tailor very naturally asks him what business he has to interfere. The judge, without telling him that he was the doctor's brother, which Redding did not know, and that as such he had a right to advise him, jumps up, snatches an iron poker, with which a man could be knocked down as readily as with a crow-bar, and for the small provocation of a tailor saying "You make yourself a little too busy in the matter," ignorant that he was addressing a dignified judge, the judge aims a deadly blow at his head, which, if not fortunately warded off, might have involved consequences to which I must not advert. What does this prove? If it proves nothing else, does it not show plainly that Judge Wilkinson is not quite as mild and forbearing in his disposition as his friend Mr. Prentiss would have you to believe? Did Judge Wilkinson's conduct show that it was his belief men's passions should be subject to the control of law, if not of reason? That he was in principle a respecter of the law in this instance?

Classics of the Bar

I know that it will be argued that there is a wider latitude given to the restraints of law in the Southern than in the Northern States, and a false assumption is built upon this circumstance, that the free use of personal liberty, to avenge private quarrels, gives greater bravery to a people. But I have read, I have witnessed, and I believe that the people of New England, a section of this great republic where you can get no man to fight duels, and where every man throws himself under the protection of the law for the redress of his private wrongs, when they have been called into the field for the protection of their country, have shown the brightest examples in modern history of personal bravery and national valor. Show me where men have been more prompt to rush upon the bayonets of their country's invaders than the heroes of New England. Sir, courage and bravery belong to the respecters of the law which protects every man's rights in a civilized community. Climate, in a country of such vast extent as this, may have its influence on men, as it is known to have on the inferior race of animals. You may meet the lion, distinguished for his courage and his power, in the Barbary States, where, conscious of his strength, you may pass him unmolested, if you are not the aggressor. As you descend to the more southerly latitudes, you meet the leopard and the panther, with whom treachery and ferocity are the substitutes for courage; and when you pass the equator you meet the hyena, the emblem of uncompromising cruelty, without a redeeming qual-

Speech of Mr. Hardin

ity. Men may, in like manner, be affected by climate; and he who on the iron-bound coast of the frozen North, or on the arid rocks of New Plymouth, would illustrate every noble virute of his own nature, not less distinguished for his piety than his patriotism, for his endurance than his courage, and for his generosity than his bravery, when transplanted to the enervating regions of the South, may become different and degenerated, trusting more to his interests than his patriotism, to advantage than to courage, and to concealed weapons than to bravery.

But to resume my review of the evidence. Judge Wilkinson, so remarkable for his mildness and forbearance, as a sample of these qualities aims a blow, as I have said before, at the tailor's head, which probably would have killed him had he not warded off the blow with his arm in a manner to give great offense to Mr. Prentiss, who cannot see the propriety of a tailor grappling with a judge to prevent a repetition of blows that might break his head. The little tailor, however, did grapple with the judge, and, dragging him to the side door, he falls with his adversary out on the pavement. The tailor, though small, being strong and active, turned the judge under, and as he did so Murdaugh hallooed out, "Kill the d—d rascal"—a command which the doctor was about to obey; and when he was within a couple of inches of plunging his dirk into the tailor's heart, Mr. Redmond caught the doctor's arm. But for that interference it would have been the last of Redding's career. Mr. Mur-

daugh had hallooed out to the doctor, "Kill the d—d rascal!" This is easily accounted for. When he saw that Redding by Redmond's interference had gained the advantage, he perceived that the tables were turned, and, fearful of the consequences, became quite as impatient to have them parted as he had before been anxious to have the tailor killed. Well, they are parted; and when they get up, Dr. Wilkinson still has his knife drawn. Mr. Murdaugh has his knife drawn, and the judge has his favorite weapon, the poker. The little tailor's courage, notwithstanding this formidable array, is up, and he steps forth, a David before Goliath, and offers to fight the whole three of them if they will lay aside their weapons. This, I think, however, was a mere brag with the poker players, for I do not believe he could have done it. Five witnesses swear that both Dr. Wilkinson and Mr. Murdaugh had out their knives. Several concur that Dr. Wilkinson re-entered the store with his knife drawn, demanding his one-hundred-dollar bank bill. All agree that he got it, and many agree that when he and his companions left for the Galt House, two went away exhibiting their knives, and one rejoicing in the poker. The knives, to be sure, have been identified as white-handled knives. Mr. Prentiss, in that able speech which you have all heard and admired, and which, it must be admitted, like a West India tornado, swept through this house carrying everything before it, even to the reason of many who heard it, seemed to think that we had some particular fancy for the

Speech of Mr. Hardin

handles of the knives because they were white handles. He thought we dwelt uncommonly on the whiteness of the handles, till like spectres they were continually flitting before our visions. With all this poetical or forensic coloring we have nothing to do; we only identified them, and the gentleman has failed to contradict us by proving that they were black, green, or red.

We have now, gentlemen, traced a small portion of this affair at the tailor's shop. In what occurred there immediately after what has been mentioned, we find the following facts established: Mr. Redding swears that he was advised to enforce the law against these gentlemen. The principal officer of police, the city marshal, is usually to be found about the mayor's office or jail, from the peculiar nature of his duties. Mr. Redding proves that he and Johnson went toward the mayor's office and looked for the marshal at Hyman's and Vacaro's coffeehouses. Not finding him there, they went on to the mayor's office. They applied at the mayor's office to Mr. Pollard, clerk of the city court, and told him that one of the gentlemen was named Wilkinson, and that the names of the others they did not know. They were told by Mr. Pollard that they should have the names; or, if they wished, they might have a blank warrant to be filled in with the names when ascertained. This Redding declined upon being told that if he could meet the marshal he could arrest the parties without a warrant. Redding and Johnson proceeded to the jail in search of the marshal. Not finding him there, Redding re-

turns to Market Street, at the corner of which he meets Rothwell, near his residence. He tells Rothwell, his brother-in-law, the nature of the affair; Rothwell goes along with him. And here I must remark that, to come down to Market Street from the jail is the shortest way, though my friend, Colonel Robertson, thinks that a man may go around by Jefferson Street, a few hundred yards out of his road, by the way of a short cut. But Redding being but a plain man, not given to sophistical deductions, believes the nearest road is the shortest cut, and took the shortest cut by Market Street, where he met Rothwell, as I have said, and told him what had occurred. He did not ask his brother-in-law to go with him, but his brother-in-law did think proper to accompany him. There was no Bill Holmes, no Marshall Halbert, no Billy Johnson; no one but Rothwell accompanying Redding. Mr. Graham swears there was no one with Redding but Rothwell, when he met them near the Galt House. Where was this terrible array of giants and Patagonians of which we have heard so much? Why, nowhere, to be sure; the gentlemen have only drawn largely on their imaginations. As Sheridan once said of Dundass, they are indebted to their imaginations for their facts, though I will not go so far as to say of my sprightly friend, Colonel Robertson, or my brilliant friend, Mr. Prentiss, that either is indebted to his memory for his wit.

Jackson swears, indeed, that he heard of the proposition of going to the Galt House to give the Missis-

Speech of Mr. Hardin

siplians a beating; yet Graham swears Jackson would always lie a little. This Jackson, whom we have shown to be unworthy of credit, swears to that being a fact which is contradicted by Redding, Johnson, and by Craig, whose credibility is unimpeached and unimpeachable. But it seems Mr. Prentiss takes peculiar exceptions to Bill Johnson, because he uses strange figures of speech and low and outlandish tropes and metaphors. Well, the gentlemen ought not to blame poor Johnson for imitating his betters in the arts and graces of oratory. I suppose he has been reading the newspapers in which the reported speeches of the most eminent members of Congress are recorded, and he finds one distinguished gentleman charges a party with being like a greasy pack of cards, all spotted and marked and shuffled together. Another young aspirant compares the secretary of the treasury, a dignitary old enough to be his father, to a she-bear running through cane-brakes and dropping her cubs at every step; and yet Johnson is blamed for his figures, if he ever used them, "of hides full of shucks," and "skinning of sheep." I thought Mr. Prentiss, who so lately returned from Congress, would have admired Bill Johnson for being so apt a scholar, like that classic personage, Zip Coon, in picking up the new and improved style of tropes and metaphors now so fashionable in the places which he himself has made resound with the aptness of his illustrations.

Gentlemen, I had got to this place, in the affair at the Galt House, where Redding and Rothwell were

Classics of the Bar

seen, unaccompanied by any one, entering that hotel. Redding says when he went into the barroom he looked over the register and called for the names. Scarcely had he got them when Judge Wilkinson entered and stepped up to the counter to take a drink of water. Redding addressed him thus: "Sir, I believe you are the gentleman who struck me with the poker, in my own house, this evening?" If Judge Wilkinson was sorry for his imprudence, why did he not then say it was in a hasty moment, and, upon reflection, he felt that he was wrong? Could Redding have resisted the ingenuousness of such an answer to his inquiry? Could he have harbored for a moment longer any irritation for an acknowledged injury? But what did Judge Wilkinson say or do? Why, he heaped insult upon injury by an aristocratic allusion to the tailor's profession. "I will not," he replied, "fight or quarrel with a man of your profession!" Now, although I agree with Mr. Prentiss that there is nothing disgraceful in a profession, and I think the poet has expressed himself with scarcely less felicity than Mr. Prentiss on the subject:

Honor and shame from no condition rise;
Act well your part, there all the honor lies;

and as Burns says,

The heart's ai the part, ai
That's right or wrang.

Yet, we cannot help imbibing with our literature and our sentiments many trifling prejudices from the

Speech of Mr. Hardin

mother country, where aristocratic pretensions have too successfully attached disgraceful notions to certain pursuits of industry, and among these, the profession most sneered at by the would-be-wits of the last century is that of a tailor. And, although a man of that profession here may justly feel that he is as respectable, and follows as respectable a calling as any other man, yet, when he thinks those old sneers are leveled at him as an insult, he naturally resents it with the indignation of an honest, industrious, and free citizen, not bound by a servility unknown to us, to succumb to him who dares to utter it.

There is, I fear, a principle growing up amongst us inimical to our republican institutions—a principle of classification favorable to aristocratic distinctions. We have our bankers, lawyers, and doctors, arrogating one rank in our society; the statesmen, heads of departments, and officials, another. Our mechanics and those who toil by the sweat of their brow to produce our riches are cast into the shade; and knowing, as they do, that such an attempt, however noiselessly it is made, still exists palpably, is it any wonder they would be sensitive to every whisper that is breathed to mark the invidious distinctions? An apparently unimportant word may wound deeper than rough language. Call a man a knave and he may forget it; but call him a fool and he never forgives you. Call a young lady a coquette and she may pardon you; but tell her she is ugly and she will never abide you the longest day she lives. Tell a tailor he is a botch and

he may not even get angry with you; but sneer at him about his goose and his profession and you insult him, though the words in themselves are harmless. It is the allusion to the prejudices that have existed which carries the poison of insult in its barb. Sir, we must not disguise the fact that there is a line of demarkation drawn by the proud and arrogant between themselves and those who live by the sweat of their brow; between the comparatively idle, who live but to consume, and the industrious, who work but to produce; between the drones of the hive and the laboring bees. And to which, pray, is the country in its strength, prosperity, and wealth indebted for its teeming productiveness? To which for her energy, enterprise, protection, genuine patriotism, and celerity in national or municipal times of danger? Go to Louisville when a portion of the city is enveloped in flames and you will see a thousand mechanics rushing into the devouring element for the protection of property, while the lawyer and judge and haughty aristocrat walk about as spectators with their hands in their pockets. The mechanics compose the moving power and labor-working machine upon whose industry we all feed and fatten. Their labors are the wealth of the country, and when we cease to honor and cherish them, we poison the springs of our own invigorating prosperity, and cut off the sources of our own enjoyments. Do we treat them with gratitude when we taunt them with epithets, which they esteem derogatory or insulting? Are we to treat them thus in the

Speech of Mr. Hardin

halcyon days of peace, and when the thunder cloud of war gathers around our course, with a monstrous pusillanimity, fling ourselves into their arms as our only hope and rescue? Has not the history of our country shown, and will it not show again, that when the storm of invasion ravages our coasts, our safety is to be found alone in the strong sinew and ready arm of our laboring population? Where, then, are your bowie-knife-and-pistol gentry, your duelists and your despisers of the man who lives by the sweat of his brow? Sir, they will be found cowering and lurking where they may snuff the battle afar off, and hide their once lofty heads in ignoble safety. But I will not consume your time with recitals which may be found in every page of our history. I shall return to the evidence in the case before you.

Mr. Everett is told by Mr. Sneed that there is likely to be some difficulty. Mr. Everett goes into the bar and by some indications to the judge meets him in the passage and takes him to his room, where they find Dr. Wilkinson and Mr. Murdaugh. Judge Wilkinson relates to them what has happened. The judge, having made this revelation, asks Everett to provide him with pistols. Why? For what did he want them? Was any one attacking him there or likely to do it? They were safe in their room. They could only want pistols for the purpose of descending and making the attack themselves. But Everett is asked to provide pistols. He said he would try, and with that avowed purpose, left them. He had not been

gone fifteen minutes, in the opinion of some—in the opinion of others scarcely ten—when Judge Wilkinson, with this lower-county toothpick (taking up the bowie knife)—not trusting this time to the more merciful weapon with which he had been practicing, the tailor's poker—with this lower-county toothpick he started down prepared to use it. Did he know Rothwell? Did he know any but Redding? No man had accosted him but Redding. Why, then, did he come down with this terrible implement of murder? Why, sir, just exactly for this reason, that he had been mortified at the result of what happened at Redding's store. The judge of the land had been turned over by a tailor. He had been bearded and abused by a tailor, and he provided himself with his bowie knife and went down to have another deal with that tailor.

Mr. Prentiss seems to think the judge had a right to go down to his supper. Why, so he had; but he had a right to wait for the bell to ring. He had no right to eat his supper before it was served up—no right to take his bowie knife down to the kitchen and terrify the cooks to allow him to devour the supper while it was cooking. And, had the supper been ready, there were table knives wherewith to carve his meat, and he had no right to carve it with a bowie knife. But the supper was hardly cooking when he went down. The bell had to ring over the private passage upstairs before it was rung below; and, when rung below, the folding doors had to be thrown open.

Speech of Mr. Hardin

But the bell had been rung nowhere; and Judge Wilkinson, Dr. Wilkinson, and Mr. Murdaugh, came down before any bells were rung; therefore, it was not to supper they came down. Which table had Judge Wilkinson been in the habit of going to, the large table, or the ladies' table? There is no proof that he and his companions boarded at the large table; and it is known that many gentlemen as familiar with the house as they had been, prefer the private or ladies' table. We have every reason to believe that was the table at which they boarded. The entrance to the room where that table is kept is not through the bar-room. One entrance to the large dining room is, indeed, through the waiting room, and there is a bar in that waiting room at which many gentlemen who are not pleaders become suitors, make motions, and put in their pleas. I sometimes make my appearance at that bar, but I am not summoned by the attachment of the bottles. I go to hear the politics of the day—for, although I have long since quit the field, I cannot be cured of the curiosity to know what wrangling is going among the little juntas in every village, as well as among the mighty ones of Congress.

When these three gentlemen got into the barroom, Mr. Redding was at the counter; Mr. McGrath was inside of it; Mr. Reaugh was at the fire. Some say Mr. Redding came in immediately after the judge. You must expect that out of twenty witnesses no two will agree in all the facts; but in a transaction like this, where several fights were going on—where in

Classics of the Bar

every corner a man was bleeding, or dying, or suffering—that no two men could see anything or everything alike is to be expected. But, gentlemen, by collecting all the evidence together, contrasting, comparing, and justifying one by another, we can arrive at the facts of the case clearly and beyond the probability of a doubt. We can arrive at them with as much certainty as we can at any other set of facts. And from this manner of collating the facts I am enabled to present them to you without fear of contradiction.

One of these facts is that Judge Wilkinson walked across the barroom, some twenty-five feet, when he came in. Mr. Trabue, a man whose evidence is to be depended upon, seems assured that when Judge Wilkinson came in he walked three or four times across the room, and then stood awhile with his eyes fixed upon Mr. Redding, his foot advanced, and his right hand behind in his coat pocket, and, I make no doubt, with his hand grasping the handle of this very bowie knife. At that moment Mr. Murdaugh went up to Redding. I will not say, with one of their own witnesses, that in going up to him he rattled like a viper; but as he went up he addressed Redding, saying, "I understand that you say I drew a bowie knife on you in your shop this evening; if you say so you are a d—d rascal or liar!" And as he said so he opened his knife and elevated it, as one said, or held it down, according to another. Yes, he accosted Redding in the most insulting terms, and threw open his knife at

Speech of Mr. Hardin

the same time. Is there any witness who has said Redding accosted him in an angry manner? One person said of the knife: "Lord! how it gleamed in the candle light!"

The most warlike nation the world ever saw was Sparta. When the Spartans prepared for battle, they polished their arms to glisten in the sun. They washed their clothes clean, combed their long black hair, and sang the song of battle. I have no doubt Mr. Murdaugh, if in the ranks, would have done the same. I make no doubt he would be the last to run. I make no doubt he would have been among the foremost to make his gleaming blade glisten in the sun. The highest evidence of a man's dexterity and intent to use his weapons is the high polish he gives them, and the high state of preservation in which he keeps them for use. Of Murdaugh's dexterity in the use of his knife in the work of death we have, unfortunately, too much proof; of his disposition to use it we have the evidence of the high order in which he kept it for use, even in that state of Spartan polish, which made it gleam in the candle light as the sword of a Spartan would glisten in the sun.

We are told Meeks was determined for a fight; yet Oliver, whose friendship for these gentlemen seems to have been of the most ardent and disinterested kind, gives up to Meeks his knife, after having so easily obtained possession of it on the small pretense of picking his nails. He has been invited by Oliver to drink at a "saloon," opposite the Galt House. They

dignify these establishments nowadays by the high-sounding title of "saloons," but when you enter one of them you find it the vilest groggery in the world. These dignified groggeries exist to a shameful extent in Louisville, and why? Because the politicians of Louisville are too busy with their unimportant bickerings, or too truckling, to put them down. They are the strongholds of the voting interests of Louisville; and the truckling politicians, who are ready to sacrifice every principle for the triumph of party, court the coffeehouse keepers and bend in supplication for their election to the inmates of the groggeries. Even the municipal government is either influenced by paltry mercenary motives in its avidity for the revenue of licenses, or it has not the nerve or public spirit to grapple with the monster. Talk of our Constitution being the greatest, the purest, and the most efficient on the face of the earth! Yet, here is an evidence of its workings in a duplicate government. The most destructive of vices, because the parent of most, is licensed, encouraged, fostered, pandered to, by politicians, and, through their truckling, by the very local government itself, as if the misery and debasement of the community were more the end and aim of their rule than encouragement of virtue, industry, sobriety, and rational enjoyment.

We learn that Meeks was unknown to many—a slender, small, and weakly man, with a bit of a cowhide, the lash of which some one says was knotted. From what we learn of this cowhide, I verily believe it

Speech of Mr. Hardin

would take at least five hundred knocks of it to kill a man; and I doubt if he could be well killed, after all, even with five hundred knocks with it. Meeks, unfortunately for himself, stepped up to Murdaugh and said, "Yes, you are the d—d little rascal who did it." In reply to this, the very first lunge Murdaugh made at him severed a vital artery and caused his instant death. I am no physician, and know not technically what effect the cutting of that artery may have; but I believe it to be as deadly as if the brains were blown out or the heart pierced. A man stabbed through the heart no longer lives or breathes, but he may stand a minute. Meeks fell, and in attempting to resume his feet, as he leaned on a chair, pitched forward on his face, and when he was examined he was dead.

When did Rothwell strike Murdaugh? Not till Meeks was killed. Then, it is proven, Rothwell struck with a cane and Murdaugh was beaten back, and at that instant the tide of battle rolled on to the right corner as you face the fire, and then Rothwell was seen losing his grip of the cane in his right hand, and he was seen endeavoring to resume his grasp of it. General Chambers thinks it was Dr. Wilkinson whom Rothwell was beating at in the right-hand corner, but every one else says it was Murdaugh. Every witness swears Rothwell was engaged with Murdaugh in the right-hand corner while Holmes was engaged with Dr. Wilkinson in the left-hand corner. Let us now consider the wounds received by Rothwell. Dr. McDowell says the puncture in Rothwell's chest

Classics of the Bar

might be made by this knife carried by Murdaugh. The skin by its elasticity might yield without having an orifice as large as the blade, afterward apparent.

Who gave Rothwell that wound? Why, Murdaugh, and nobody else. This accounts for Rothwell losing the grip of his stick or his cane. The moment the knife penetrated his chest on the right side, that moment his arm became paralyzed, and he could not hold his cane. He caught at it, but did not use it after. Just then Judge Wilkinson came up behind with his bowie knife in his hand, and General Chambers says he saw him make a lunge at Rothwell and stab him in the back. If two men are engaged in a fight—one with a dirk knife like this, and the other with a stick—in the name of God, let another with such a bowie knife as this stand off; but if he must interfere on behalf of him who has the deadly weapon, and against him who has not a deadly weapon, let him do the work of death front to front—let him stab him in the breast and not in the back. But, to come up behind and stab him in the back, who is already overmatched by his opponent in point of weapons, evinces a disposition which I shall not trust myself to dwell upon or to portray. Ossian, in speaking of Cairbar's treachery, says:

Cairbar shrinks before Oscar's sword! he creeps in darkness behind a stone—he lifts the spear in secret—he pierces my Oscar's side!

By this time Dr. Wilkinson was down in the left-hand corner and Holmes over him. The fact is,

Speech of Mr. Hardin

Holmes was the only man that knocked the doctor up against Trabue, though Halbert boasted of having done it. It was only a boast in Halbert, for I believe he goes over his fought fields more at the fireside than on the battleground. In the language of Dryden, speaking of Alexander:

The King grew vain;
Fought all his battles o'er again,
And thrice he routed all his foes,
And thrice he slew the slain.

(It was now late in the afternoon and, at Mr. Hardin's request, a recess was taken until the following morning. When the court reconvened, Mr. Hardin resumed his argument. There were present at least two hundred ladies and more than a thousand men.)

[Mr. Hardin:] Gentlemen of the jury, I would endeavor to resume the few remarks on the evidence which I offered yesterday, as near the precise place where I left off as possible, if I did not know that in the present case such particularity is not so requisite as in the case cited by John Randolph, who once told of a man that was so precise that he could, if interrupted and called off in the middle of his dinner by the sound of a horn, take up his dinner exactly at the identical bite where he had left off. I am not quite so particular, and shall probably recapitulate some of the evidence I have already gone over.

Yesterday evening I attempted to give you the law and the facts of the case as nearly as possible, as far

as I went. I shall now repeat that you are not to take as facts all that may be sworn in a cause. Although witnesses may be men of undoubted integrity and veracity, yet all they state are not facts. They are fallible beings, and likely to misconceive and misinterpret facts without any intention of doing so. We are to ascertain the facts from the mass of evidence, and judge of each witness's competency by contrasting his evidence with that of others, and when it agrees with all or a majority of the witnesses, we may safely infer he is right. I endeavored yesterday to examine the facts that occurred at the tailor's shop, for the purpose of showing the ill blood fomented in these gentlemen's hearts against Redding. I then showed that they acted in concert, and provided themselves with what weapons they could, not being able to get all they wanted; and how, upon a small occasion, they were prepared to use these weapons. Indeed, there seems to be no witness as to what occurred when Judge Wilkinson remained in consultation with his companions in his bedroom. . . .

We may judge of the shifts the defense is driven to, when it is forced to rest upon such witnesses as Oliver, a man whom no one in Louisville would listen to; and Jackson, the Pharisee, who talks of religion without a spark of it in his heart, and who is discredited by men who, as witnesses, are unimpeached.

If Judge Wilkinson, Dr. Wilkinson, and Mr. Murdaugh were known to be frequenters of the bar before meal times, why has it not been proven by one of

Speech of Mr. Hardin

their witnesses? That being not proven, I have a right to assume it could not be done, because it was not the fact.

Next I have to ask, why these gentlemen came into the barroom provided with arms? Could it be with any other design than to run Redding out of the room? Were they going into a room where they commonly resorted? It is evident they were not. Did they go there on their way to supper? It is evident they did not, for supper was not near ready.

What disposition for eating a supper merely does it show in Judge Wilkinson to pace the room three or four times, and then fix the eye of destruction on Redding, while his purpose kindles, and he grasps his bowie knife behind in his pocket? What more eagerness for supper does Murdaugh exhibit in going straight up to Redding, rattling like a viper, and charging him with being a liar? Sir, I care not if a man go into any crowd, and, before an angry word is used to him, he goes up to as meek a man as Job himself, and says, "You are a d——d liar, or rascal," and flings open his blade to inflict mortal injury, as his words indicate, if the person so accosted strike his insulter, it is not surely any great wonder. And yet Redding did not strike a blow. Mr. Murdaugh may say, "I kept within what I thought was the safe side of the law—I approached with my drawn knife—insulted the person to draw on the attack from him, that I might have some excuse for using my knife in the manner in which I came to use it at any rate." If any man come up

and call you a d——d liar, or a rascal, and spring open his knife in the attitude of striking, should you strike or slay such an assailant, would you not be excusable? But Colonel Robertson attributes to acts of this kind nothing but a manifestation of innocence and high spirit. The colonel is really a gallant man, and judges of others by the fire and chivalry raging in his own breast. You must not laugh, gentlemen, for if you could look upon the volcanic mountain, though you would see its head capped with snow, you would find its bosom, like his, rumbling with fire, smoke, and brimstone. In former times, the highest honor known to a Roman soldier was to have saved a man in battle, but here it is argued that if a young aspirant to fame pinks and kills his man, he is to be sent home to his parents in honor, crowned with the chaplets of victory. Nay, it is believed if Bonaparte, in his youthful prime, in his Italian campaigns, had had Murdaugh by his side, he would have confided to his ready and unerring arm the execution of many a hard adventure. Colonel Robertson may say what he pleases, but I say it was Murdaugh who commenced the assault, and that all fighting done by him was in the wrong. All fighting done on his account was in the wrong, because he had commenced in the wrong.

Well, gentlemen, as I remarked to you yesterday when I stopped—for I am now returning once more to that point—Murdaugh had given the first provocation, had killed his man, and stabbed another to the death, when Judge Wilkinson stepped up and gave

Speech of Mr. Hardin

Rothwell a stab in the back, while engaged with and probably receiving the stab in the chest from Murdaugh. Yes, gentlemen, a third man comes up and lunges this beautiful little weapon into Rothwell's side, and starts back! Sir, if men are engaged with deadly weapons, part them if you can, but do not come up behind them and lunge a bowie knife into the vitals of one, and then come into a public court and demand it not only to acquit you, but to do it with shouts of "Glory, glory, go, go!" And yet, gentlemen, this is the polite invitation given to you by Mr. Prentiss, to acquit such a man with acclamation. When engaged with a man who has only a cane no bigger than his thumb, his opponent gives that man a deadly stab in the chest which paralyzes his arm—a third person—Judge Wilkinson, for instance—comes up behind and stabs the paralyzed man in the back, it is, no doubt, high time for you to be called upon to mark your approval of the deed by shouts of acclamation? Mr. Prentiss, by the way of winning your favor by complimentary allusions, thinks Kentucky should no longer be called the "bloody ground," because the river Raisin has carried off the palm in feats of human butchery. But I think the Mississippi gentlemen, of Vicksburg, have bidden fair of late to obtain for that part of Louisiana opposite their city the palm of being the "dark and bloody ground." I suppose, in the far-famed Menifee duel with rifles, if some one had stepped up and lunged a bowie knife into the vitals of one of the combatants, the shouts of

acclamation that would have arisen in that quarter of the world would have resounded to the very uttermost ends of the earth.

Dr. Wilkinson, by this time, became engaged with Holmes. Holmes is a stout and large man, but his size has been greatly exaggerated. Like the Patagonians, the first discoverers thought them ten feet in height; the next voyagers only eight, and the next but six. I recollect reading of Captain Smith, that when he first explored the interior of this country, on his return he represented the inhabitants as all Goliaths, six cubits and a span in height. Yet, subsequently, more matter-of-fact men found they were only miserable and cowering Indians of ordinary dimensions. In this manner appearances are magnified.

We are asked why Holmes is not here? We echo to the other side, "Why is Holmes not here?" Our answer is, because he was not to be had, being a pilot down the river, and not within the control of the State's attorney or any process issuing from him.

Mr. Trabue proves that Holmes knocked Dr. Wilkinson against him, and that Holmes followed up his blow and knocked the doctor down. Another witness proves that Dr. Wilkinson had his knife in his hand on the floor, and Redding proves that he found the knife on the floor, and it had blood on it. We have, then, evidence that all three were using their knives for the shedding of blood. Sir, among other appeals made to you for acquitting them, you are told, as a set-off, that there is no State in the Union on which you are more

Speech of Mr. Hardin

dependent than that of Mississippi. They take their cotton South and receive, either through shipping agents or drafts direct, their money for it from the merchants of Great Britain. True, Kentucky gets some of these dollars from the Mississippians for what they think better than their money, or their produce, or they would not buy it. We, in the rounds of trade, pay these dollars, or what represents them, to the Liverpool merchants for merchandise that we think better than the money. The Liverpool merchants in the next turn of the wheel pay the same dollars back to the Mississippians for their raw cotton, and the Mississippians are nothing loth to take our produce again for the same dollars. And after several twists of this kind, when we get them back and recognize one of them as an old acquaintance, we may say, "How do you do, friend dollar, I am very glad to see the face of an old acquaintance; step into my pocket and warm yourself; I always give shelter to a traveling friend." We are proverbially a hospitable people, and never refuse a night's lodging to a dollar or its liberty to travel farther next day upon leaving us an equivalent for what we lent it. But, to be serious, are we not all dependent on each other? I know this, and cannot admit that we owe more to Mississippi than Mississippi owes to Kentucky; and why there should, in this case, be made any parade about our indebtedness to that State, not founded in reality, is for you, gentlemen, to weigh.

To resume the facts of this case, what does Judge

Classics of the Bar

Wilkinson do? He stabs Holmes in the arm; but he is not indicted for that. He stabs Rothwell, when he is engaged with Murdaugh, in the right-hand corner; and again, when in the left-hand corner, standing over Holmes, and trying to get him off his brother. Rothwell has been disabled by two stabs. Judge Wilkinson, standing at the dining-room door, when Rothwell was saying nothing except in mercy trying to persuade Holmes to spare Dr. Wilkinson, comes across the room to the opposite door, finds Rothwell's back turned to him, and then makes the last and second thrust of the bowie knife into his victim's back. Mr. Robert Pope says, "I saw Rothwell's back to Judge Wilkinson, when the judge stabbed him up to the very handle." I ask you, gentlemen, I speak to you not in language other than broad and naked truth, does any witness deny this? Every one that knows Robert Pope knows that he would not state what he did not know to be a fact. We know that each and all these wounds contributed to Rothwell's death. The last stab is given by Judge Wilkinson to Rothwell; Dr. Wilkinson and Murdaugh retreat out into the passage, and fight their way to the foot of the stairs. I care not what was done there; it was done after the offense previously committed. Suppose Oldham had shot one of them, and not missed as he did; suppose Murdaugh had been knocked down; and suppose Judge Wilkinson received blows in the passage; does it lighten the offense previously committed? I care not what took place when a man has killed another. When making his escape, I

Speech of Mr. Hardin

care not how many guns are fired at him, how many rocks thrown, because it alters not his previous offense.

If there is any evidence that any one in the barroom laid a hand on Judge Wilkinson—who has proved it? Is it not plain that any bruises or injuries he did receive were received in the passage?

Mr. Prentiss said he was willing to stack arms with the Kentuckians. What arms had they? They had a cowhide whip. We hear of a cane, which he thinks may be conjured into a sword cane. Mr. Holmes, indeed, had his fists, but he could not stack them. We are told that Oldham had arms, by a witness who viewed the scene from the outside of a window, like one of the venerable birds perched on a dry limb eyeing the slaughter with a prospective instinct—one of those remarkable birds renowned alike for their gravity and great stillness. We have heard a good deal said, and well said, if true, about Oldham; that he was unsteady; that he cast his eye on his counsel for relief. Yet we really saw nothing in his conduct to warrant his being called perjurer, scoundrel, coward, and rascal; and here I must remark that this very talented young gentleman, Mr. Prentiss, in using such epithets to a witness without a shadow of justness in the application warranted me in saying that though I admired some passages in his speech, yet others I should feel bound to denounce as unworthy alike of his profession and of his character.

No man in this State can boast of a prouder ancestry than that very Oldham, whom it has been at-

tempted to brand as odious and infamous. They have been among the earliest settlers and esteemed of our citizens, trusted with command in our army, and venerated on the judicial bench. And has a man sprung from such honored stock no pride in upholding his name, no feelings to rouse his indignation when epithets as gross as they are groundless are poured out to tarnish his reputation, for the paltry purpose of influencing a jury to discredit his testimony, and to warp their judgments from the straightforward path of truth and justice?

What proof has Mr. Prentiss to sustain the course he has taken? Sir, there is no shade of proof. The gentleman is indebted to the fertility of his fancy, and his best friends must regret that he has not, in this instance, cultivated that productive soil for some more praiseworthy object than an ignoble and disgraceful crop of baneful, destructive, and loathsome weeds. Does the gentleman think he is one of the angels appointed to pour out the vials of wrath? Has he not indulged in pouring out gratuitously his vials of wrath on Mr. Redding, who could not escape? Redding is stigmatized as a murderer, to be haunted by the ghost of the slain at his nightly couch. Yet, what was his offense? He raised his arm to ward off the blow of an iron poker aimed at him by Judge Wilkinson. He has profaned a judge's person on this trifling provocation by seizing him, dragging him to the door, and turning him under. "Oh, you scoundrel!" would Mr. Prentiss exclaim, "why did you do that?" He

Speech of Mr. Hardin

had retorted upon Judge Wilkinson when taunted by him about his profession; and, worse than all, he did not, when the killing was going on, stay in some convenient place to be killed. "Why did you not, you coward, rascal, murderer, perjurer, and so forth, turn your back to be stabbed with safety? Why did you not stand up with your face to the breeze when the sirocco swept along, carrying death on its pinions? Why did you fall on your face, and let the pestilential blast pass over you? Why did you not breathe until it was gone? You and your friends have offended us by your want of submission, and now you aggravate your offense by coming here to testify against us."

Really, it is astonishing they are yet alive! But it will be more astonishing, perhaps, when it is told that they will return to Louisville, and there stand, in point of reputation, just as they stood before these slanders were concocted, digested, and spewed upon them. It will turn out that they are yet unpolluted and unscathed. The same protecting Providence which carried the Israelites through the Red Sea will protect even these persecuted and wronged few.

Gentlemen, I have endeavored to trace facts, as far as I have gone, with minuteness, and, having presented these facts to you, it is for you to determine whether they do establish these conclusions. When the fight occurred in the barroom, it was brought on by these gentlemen intentionally. If they brought it on, did they fight in their own defense, or because

they had drawn the conflict on themselves? Could Meeks have inflicted death with a cowhide, or Rothwell with a walking-stick, so as to render the killing of them necessary or justifiable according to the true spirit of the law?

But here there is a proposition of law advanced by Mr. Prentiss which I must combat. He says that the law recognizes that the point of resistance unto death begins where a man himself believes the point of danger ought to be fixed. Then, we have no law at all—we may burn up our law books; this revokes all they contain on the subject of homicide. There are two men engaged in a quarrel, one as brave as Cæsar, the other as timid as a hare; one kills the other, when the quarrel has arrived at a certain point. The brave man, if he were a Marshal Ney in courage, is to be hanged, because he had no fear of his life when he killed his adversary. If the timid man is the survivor, he is to be acquitted with acclamation, because of his cowardice, which made him imagine danger where there was none. Thus cowardliness and rashness are to be rewarded and cherished, and bravery and forbearance punished with an ignominious death. Is it possible you, an intelligent jury, can be imposed upon by such sophistry? Is there so low an estimate of your understandings as to suppose it?

A is tried and acquitted, because he is a base coward, and apprehends danger at a point where there is no danger at all. B is tried for precisely a similar homicide in every particular, and because he is not

Speech of Mr. Hardin

quite as big a coward as A, but apprehends some danger, is to be found guilty, and sent to the penitentiary for a term of years proportionate in duration to his lack of cowardice as contrasted with A. C, for precisely a similar homicide, because he is incapable of fear, is to be convicted of murder, and straightway hanged!

(Here Mr. Prentiss interrupted Mr. Hardin, and again stated his position.)

[Mr. Hardin:] It makes no difference; the same principle is involved.

I knew that I should have to combat this very principle the moment I saw the hack driving into town with a head peeping out of the window, which head I knew belonged to the shoulders of a certain gentleman from Mississippi. When I was in Vicksburg, I asked a gentleman how it was that Mr. Prentiss defended so successfully so many notorious murderers, who really merited the gallows? "O," said he, "he has hit upon a principle which he calls law, that charms every jury to which it is addressed." I asked the gentleman to repeat the magical words to me. He did so. It was the very principle I have been combating. It is possible that as the gentleman afflicted with this chronic principle, which he belches up with so much advantage to himself and relief to others, is now in the neighborhood of Medical Springs, esteemed so potent by Mississippians, he may resuscitate, by a few drinks of the charming water, a sophism which I have shown to be no longer tenable by any one who

values what is healthy and sound above that which is merely delusive.

Sir, the principle of self-defense does not warrant a man in killing under the name of self-defense, if he is himself in fault by being the aggressor.

Is the principle of self-defense among nations to be carried into effect as justly applicable to the right of self-defense among individuals? In national controversy, the law of nations, an imaginary code of mutual convenience, is referred to according to the custom of the country, but in a conflict between individuals there is a defined law which must be the redresser. A nation with right and justice on her side may be conquered by another nation in the wrong, and cannot sue for or obtain redress from the wrong-doer; but an individual, in a community, may be wronged by another and can obtain redress, because he has the law common to both, and a superior power to appeal to. Therefore, there can be no dependent analogy between the laws of nations and the laws of individual communities. There was some crude idea thrown out yesterday that the laws of Great Britain ought not to be enforced here. We are not to be told at this day that we have any other common law than that derived from the common law of England. The very principles of our statutory laws are dictated by the genius of English common and statutory law, with the exception of such local differences as require local application of principles. If the gentleman could take from us the right to apply the law of England where

Speech of Mr. Hardin

it would be in point for us, we could, by reciprocity, deprive them of any they might most rely upon. Where, then, is the advantage of raising such an objection? But it is quite unnecessary to dwell on this point.

I shall now advert to the peculiar necessity enforced upon us of becoming a law-abiding people, if we would preserve any regard for our present form of government and constitution. In empires, monarchies, and kingly governments, armies are formed to keep the people in order; but in a republic, what could preserve the social compact but the law? The moment you dissolve or dispense with the law, that moment you dissolve our national constitution. Every government, and most especially a republican government, is bound to protect each citizen in his property, reputation, and life. How can a republican government do it, but by and through the law rigidly and justly administered? Whenever you dispense with the law, you allow men to arm themselves and to become their own avengers, independent of and above all law. When they are not only permitted to do so, but to return home as innocent men, what is the effect? Every man will arm himself, and, like the turbulent and the licensed armed mobs at the fall of the Roman republic, brutal violence will reign instead of law. All government will be dissolved, and anarchy and confusion will pave the way to usurpation and tyranny. You must venerate the law if you would not see such a state of things. If you do not, A and B will arm themselves, like the Turk, up to the

throat, and kill whom they please out of mere wantonness and sport.

If you go into the Northern States, it is a rare thing that you can find a man in ten thousand with a deadly weapon on his person. Go into other States that shall be nameless, and you will hear of them as often as of corn-shuckings in an Indian summer. Go further South—to Arkansas or Mississippi, for instance—and though you would be a peaceable man, shuddering at the name of a “tooth-pick” in the North, in these States you may arm yourself to the teeth, and track your steps in blood with impunity. Why is this, but from the relaxation of the laws that are elsewhere enforced and obeyed?

I was down the river lately, and it was pointed out to me where the *Black Hawk* had blown up and killed her scores; to another place where the *General Brown* had blown up and killed her hundreds; to one spot on the shore where two gentlemen blew each other’s brains out with rifles; to another, where the widow somebody’s overseer was butchered; to another, where the keeper of a woodyard was shot for asking pay for his wood; to another, where an aged gentleman had his guts ripped out for protecting his slaves from cruel treatment. “Great God!” cried I, at last, “take me back! take me back to where there is more law though less money”; for I could not stand the horrid recital any longer, when every jutting point or retiring bend bore the landmark of assassination and irresponsible murder.

Speech of Mr. Hardin

Why does the law call for punishment? Surely it is not in vengeance for the past, but to deter others from the too frequent and free use of deadly weapons, whether in Kentucky, Louisiana, Mississippi, or Arkansas. Is it to be left to the vitiated taste of the brutal few to give tone to the mind of a community in setting up the code of the bowie knife against the common law? It was but the other day that in the Legislature of Arkansas, a member on the floor was a little disorderly, and the speaker, to keep quietness, stepped down, brandishing his bowie knife, to silence the ardor of the unruly member, which he did effectually; for, of all the ways in the world of putting down a young and aspiring politician, whose tongue will keep wagging in spite of his teeth, your bowie knife is, I admit, the most effectual. And the speaker, on this occasion, bent upon having silence, silenced the offender, not only then, but for all time to come. To be sure, he went through the form of a court of inquiry, but a life is only a small matter there, and he was acquitted according to the laws of the State.

“Coming events cast their shadows before,” and here we have one symptom of the downfall of our glorious Republic, which has been so often predicted, but which has been reserved for the present generation to consummate. The symptom is to be found in the flash of those deadly weapons carried about and used with such unerring fatality by our legislative sages and judicial dignitaries. As if the next should

come from high places, too, we have a fatal symptom of our downfall furnished by the corruption of those in office, who share in or connive at the grossest defalcation—the widest system of public plunder, even in our monetary defalcations, ever known in any government.

Why should we deceive ourselves with the vain hope that our Republic will boast greater permanency than that of Rome, when we are fast falling into the very track, step by step, which leads to the precipice over which she plunged headlong? That once magnificent mistress of the world marched up the hill of fame and glory with irresistible strides, till she at last reached the summit, and looked around upon the hundred nations in her rule. But, at last, satisfied with prosperity, she began to repose supinely upon her laurels, and she permitted herself gradually to relax that discipline and good order which had been to her not only her shield and buckler, but her bond of union. The people were permitted to fight in twos and threes, at first, with impunity. They became accustomed to it, and then fought without interruption in gangs; by and by, mobs fought with mobs; and, finally, the whole people became arrayed against each other in regular armies, till they had to retire to the plains of Pharsalia, where the doom of the greatest republic the world had ever known was sealed forever.

Are we not relaxing the laws—which leads to anarchy, and from personal violence to popular usurpation? Are we not relaxing our financial vigilance—

which leads to corruption at the fountain head, and from private peculation to public defalcation? Is there no symptom in all this of a great crisis? I tell you again and again, when you can lay your hands on great delinquents, make them an example; when you can grasp great defaulters, punish them; then will you more easily check pernicious discords, and restore to its proper tension and tone the harmonizing power of your laws and your government. Whenever you see men wearing bowie knives and daggers—hunt them down as you would bears and their cubs, from whom you can expect nothing but injury. The whole State of Kentucky looks to you this day for justice, for this is an awful investigation concerning the loss of two of her citizens. Two of our fellow-citizens have been murdered, and these gentlemen stand here to answer for it. Some of the best blood of the country has been spilled as if in the pen of slaughtered hogs; but because the relatives of one of these butchered men employ counsel to aid in the prosecution in developing the truth and guarding against the delusions of sophistry from the greatest array of talent the country can boast, or that wealth unbounded can procure, to elude the punishment due to the offended laws, you are told to take but a one-sided view of the evidence, and decide, at any rate, against the paid advocate. I have not asked these gentlemen what they are to be paid for eluding justice, because I did not consider that a sort of evidence which ought to influence your verdict.

Classics of the Bar

Gentlemen, one question is, are we to tolerate this bowie-knife system under the pretense of self-defense? I say, let your verdict act like the ax laid at the root of the tree, and many a prayer will bless you for your timely check of its growth. Many a woman is made a mourning widow, many a child made a pitiable orphan, and many a father childless by the use of this accursed weapon. You have it in your power to prevent the recurrence of such scenes.

We have had an exhibition here in miniature of those Roman scenes which prepared the public mind for the downfall of that great people. There was a vast amphitheater where the Roman people could be crowded together, and, in the presence of some hundred thousand persons of both sexes, a man would be brought into the arena and a ferocious tiger turned in upon him. He might or he might not possess skill or courage to meet the formidable beast and evade the deadly spring; but, if not so fortunate, when the tearing of his vitals was seen, and the craunching of his bones heard, the solitary shriek of the victim's wife, as it arose upon the air, would instantly be drowned by the acclamations and thunders of applause bestowed upon the ferocious beast, prolonged by its renewed efforts to suck the blood, tear the flesh, and grind the bones of its prey. As we have no amphitheater, a hall of justice is made to answer for a miniature arena; and as we cannot have tigers, nor men who will submit to be their victims, we have forensic gladiators, and witnesses whose private feel-

Speech of Mr. Hardin

ings and characters may be wounded, lacerated, and tortured to the infinite delight and encouraging shouts and plaudits of a fashionable auditory, while the victim is helpless and gloomy in his unmerited prostration. Yes, it is all for the amusement of enlightened minds, and it is intended, perhaps, for the edification of the rising generation. But, I protest, I cannot perceive that it is any more for the honor of the applauders than it is necessary for the good of the country that these gentlemen should be honored and glorified for their dexterity in the use of the bowie knife and dirk.

In the time of public danger or foreign invasion, is it these bowie-knife gentry, these pistol men in private life, that mount the breach and face the danger? Are they the brother Jonathans that face John Bull and eye him and his scarlet coats with defiance? Where are they then? Why, they are like the gnats and mosquitoes, that glisten in the sunshine and calm, but, when the storm rages, and the thunder growls, and the lightning flashes, and the earth is rocked to its center, they are stowed away from the danger, though they are sure to emerge from their hiding place to annoy with their stings when the succeeding calm and sunshine invite them out once more. Brave men may be voluptuous and effeminate in private life, but, in the hour of danger, they put on a new nature. But these fighters in time of peace clothe themselves in the skin of the lamb in time of war. Sardanapalus, who sat all the while with his women

Classics of the Bar

and eunuchs in times of peace, spinning and knitting, and telling long stories, no doubt, and sometimes wearing petticoats to make himself more effeminate, when conspired against by Belesis and Arsaces, gave up his voluptuousness, and, at the head of his army, gained three renowned battles, and, though beaten and besieged at last in the city of Ninus, to disappoint his enemies, burned himself, his eunuchs, and his concubines, with his palace and all his treasures. Alexander the Great, who was kind and courteous, familiar and confiding with his officers in private life, when leading the Macedonians, moved to battle like a pillar of fire, irresistible in his might. When the great Frederick led on his brave Prussians, they fought and fell and fought and fell, as long as any were left. And thus men imbibe the spirit of their chief. If led by a brave man, they are brave; but, if led by a coward, they are poltroons; and, if led by the bowie knife and pistol gentry, I make no doubt that they would be either assassins, or nothing better than mosquitoes, to be dispersed by the first report of the cannon. Even at home, in our own rural districts, we see the influence of leading men on whole neighborhoods. Let a virtuous and enlightened man, whom all will look up to as a pattern, settle in your neighborhood, and every one will partake of his good influence.

Why was it that Nelson, in his death, did more for the glory of his country than he ever did in his life? Because he ascended to heaven in the arms of victory, like Elijah, who tasted not of death.

Speech of Mr. Hardin

Let us never dream of selecting for our leaders or examples those who have so little moral courage as to trust to bowie knives and pistols for the preservation of their manhood, instead of to their blameless conduct in peace and bravery in war.

Gentlemen, I beg of you, in the name of Him who sits upon the cloud and rides upon the storm, mete out the measure of justice to these men and vindicate the honor of Mercer County. But do not stigmatize your county by doing, as Mr. Prentiss would have you to do, by shouting "Glory! glory! go, ye righteous; go to your homes in honor and innocence." Whatever you may do, I shall content myself with the conviction that, in my professional capacity, I, at least, have done my duty.

I have been deputed by the widowed mother of the murdered Rothwell, and at the instance of his mourning sisters, to implore your justice. I have closed my mission. Between you and your country, between you and your God, I leave their cause.

And thus the great speech which had lasted for parts of two days was concluded.

Dr. C. C. Graham who witnessed the trial said: "Mr. Hardin forced upon the jury all the convicting law that ever was written, and like a bull-dog clinching his fangs upon every vulnerable point, making all that any mortal man could out of the case. At the close of his powerful argument whispers were heard all around 'the jury is bound to convict.' " Judge Rowan said the speech was "as remark-

Classics of the Bar

able for vigor of intellect as for vehemence and impassioned zeal."

Two other speeches were delivered after Mr. Hardin closed his address. The jury then retired and at the expiration of fifteen minutes returned into court with a verdict of not guilty.

It will be interesting to note this observation of Mr. Little in his splendid biography of Mr. Hardin: "The court house was crowded during the arguments of Prentiss and Hardin with the beauty and intelligence of the State. But the tide all flowed toward the defendants. If anything were lacking to their acquittal the oratory of Prentiss more than supplied it. The prosecution had been literally overwhelmed before Mr. Hardin came to speak. . . . The citizens of Harrodsburg had been in warm sympathy with the Wilkinson party. That sympathy deprived Mr. Hardin during the trial of those courteous attentions which his age and reputation entitled him to expect. Prentiss was the hero of the hour. Hospitality turned her 'cold shoulder' to Hardin. He smarted under the studied neglect with which he was treated. Mounting his old gray horse, in front of the hotel to start home after the trial, he dropped an observation to an unsympathetic crowd standing by which was afterward remembered with bitterness of soul in that corporation. Mercer County (of which Harrodsburg was the seat of justice) then embraced the town of Danville, and the rich and fertile territory subsequently included in Boyle County. Danville had long sought to establish a new county, which Harrodsburg had vigorously opposed. It so happened at that time that Mr. Hardin had two influential sons-in-law in the Legislature. 'I will see,' said he, reining up his

Speech of Mr. Hardin

horse, 'I will see that John Helm and Dr. Palmer run a stake-and-rider fence between here and Danville.' In performance of that threat or fulfillment of that prophecy, it so happened that in a year or so afterward the Legislature carved the county of Boyle from the very heart of Mercer."

Syester's Plea for His Client

IN Volume I is told the story of the trial of Crawford Black, charged with the murder of Col. W. W. McKaig in one of the cities of Maryland many years ago.

It is there seen that Black and McKaig met on one of Cumberland's streets, weapons were drawn, pistol shots rang out upon the air, McKaig fell dead and Black was heard to say: "Now, seduce another sister of mine."

Since the publication of that volume the compiler has had the good fortune to find the report of the speech delivered in the case by Hon. A. K. Syester in behalf of the defendant.

This speech deserves a prominent place in forensic literature, and is given herewith in the hope that it may not again become lost to the world.

Argument of Mr. Syester

MAY it please the court and gentlemen of the jury: In dealing with a case on which the life or death of a human being is embarked, I desire to treat of the facts and the law of the case, and of those alone.

Syester's Plea for His Client

I shall find no time, and I entertain no inclination whatever to indulge in any remarks having reference to the relations which any persons bear to this case. The motives which may actuate others in the prosecution of my client, and their purposes have nothing to do with the real cause before you, except so far as they have fashioned and given tone and temper to the prosecution itself.

But while I may with entire propriety withhold the expression of any opinion on the subjects just alluded to, my duty compels me to advert (and my feelings may lead me to do so with emphasis) to some of the circumstances that have marked this prosecution, and have distinguished it for bitterness, above anything of the kind that has ever fallen under my notice in the course of a practice of over seventeen years. Gentlemen, the importance of this case to the prisoner at your bar, to his afflicted and heart-broken parents, and to all those who are near and dear to him by the ties of nature and blood cannot be magnified.

To him it involves nothing less than his life—to them the crushing sorrows and painful griefs, which must be expressed in tears and wretchedness over his early grave, or the smiles and joys which will welcome him once more to the arms of a family whose name he has not dishonored, and to the bosom of a society whose peace and order he has not unlawfully broken.

You find him, his counsel, and witnesses all strangers before you, and the prosecution for his life fortified by

gentlemen conspicuous for their ability, learning, and experience.

I pass over the circumstances of the removal of this case at the instance of the prosecution, and the dragging of the prisoner over a hundred miles away from his home to be tried before strangers. All that I adverted to in my opening state of facts a few days ago.

I pass over other circumstances, prominent in this case, which have occurred to me as unusual and unprecedented, and call your attention to some of the things that have transpired before you, and which are full of significance.

Look, in the first place, to the remarkable fact that we have been engaged now for nine days in inquiring into a transaction that occurred in the presence and also under the eyes of no less than twelve or thirteen persons. And when the prosecution undertook to develop the facts of that transaction it contented itself with calling but three witnesses out of the twelve, in order to lay the truth before you.

One of those witnesses (Mr. Conner) saw nothing of it, except the very last moment of the scene of that tragedy—he saw only the dead body of McKaig. Two others, Dr. Healy and Mr. Gross, saw some part of the transaction. Indeed, it is quite plain that Gross saw no part of the beginning of the transaction at all. He saw nothing of that part of the affair which is the turning point in the whole case, and which is the one great controlling central fact in this whole transaction. He tells you he was looking from a window, and, seeing

Syester's Plea for His Client

people looking up the street, looked up also, and then saw McKaig off the pavement retreating toward the north side of Baltimore Street, Black following him.

Now, gentlemen, *that* part of the affair is what a dozen other witnesses saw, and eight of them saw more. Eight others saw what this prosecution has openly endeavored to suppress; they saw what occurred before Mr. Gross looked at all, and it is just here, around what occurred before Gross saw anything, that the whole interest of this case centers. It is around what transpired before a shot was fired that the contest in this case rages, and there center and concentrate the momentous facts of this trial, and it is just there, as to what took place, what was done by these parties before any shot was fired at all that I invite your attention, for on a proper and clear view of that depends the issues of life and death here as they were made up and staked on that fatal, bloody morning.

Gentlemen, Mr. Gross tells you he was looking at the men loading a stove, and when I asked him why he should have put himself to so much trouble as to leave his work, get on his knees, and crawl over his workbench to look at an occurrence which he must have witnessed a hundred times in his life, he told you that the reason why he did that was because the men were "straining" themselves lifting in the stove; and it was while they were thus "straining themselves" he saw a commotion and heard the report of a pistol. He looked, and McKaig was near the middle of the street.

Now, in the subsequent stages of the case, Mr. Moorehead is called by the prosecution, and he swears he was proprietor of that store; that he had been engaged in loading that stove; that the stove was on the wagon, and all hands had retired into the storeroom, looking for the furniture of the stove; and it was then, after they had left the street, and were inside that he heard the report of a pistol, went out, and saw McKaig in the middle of the street, with Black at his back or side, and then a second fire or report of a pistol.

Now, that is plainly the report which our good friend Gross called the first report, and this prosecution in the face of all this was willing to send the soul of this boy at your bar to eternity, consign his body to an ignominious grave, and couple his name and memory with the crime of a murderous assassin by laying before you only a partial view of the matter into which it professed to be inquiring with the sole and only purpose of testing its truth, its whole truth, and nothing but the truth.

You will not fail to remember that the prosecution rested its case on the testimony of Dr. Healy, Mr. Gross, and Cornelius Conner, and that Moorehead was not called until the defense opened up the whole transaction, which I here declare was the duty of the prosecution to have done in the first place.

Mr. Gross was called on to testify to what this prosecution knew was but a partial view of the case, and on his testimony, revealing only part of the case, with full knowledge of all the other facts, the gentlemen

Syester's Plea for His Client

conducting this determined and energetic prosecution were willing to rest this cause, freighted as it is with the life of a young man whose name and character has been maintained and upheld for all that is orderly, peaceful, and gentle by the unanimous voice of the entire people before whom he has gone in and out from his childhood.

Was this prosecution dealing fairly and candidly with you? Are gentlemen entitled to the confidences of a jury when found resorting to practices like that, and that, too, in a case like this? Mr. Gross saw no pistol in McKaig's hands; neither did Dr. Healy, nor any other witness called by the State. Those alone who saw least of this affair have been relied on by the prosecution, and they now have the boldness to look astonished and profess wonder at the idea of the prisoner setting up the doctrine that McKaig was armed with deadly weapons that morning, and would have you believe that they participate in the astonishment of Dr. Healy, who declared on his oath that he first heard of McKaig being armed and ready to fight when I made the prisoner's statement the other day. Why, gentlemen, the street that morning was strewn with pistols, and McKaig, who left his home that morning "in the peace of God and the State of Maryland" was a walking battery, armed to the teeth with not less than eighteen deadly shots. The developments of the entire case show this and show it, too, from the lips of witnesses for the State, and yet in the presence of all this you have been gravely told that nothing was ever

Classics of the Bar

heard of the theory of self-defense until it was disclosed by me in my opening statement.

Follow this thing one step further, and see how far this prosecution has been dealing candidly with the jury, and fairly with the life of the prisoner. I hold in my hand the indictment found by the grand jury of Alleghany County. You will remember that we, the defense, called a witness, Dr. Hummelshine, who proved that immediately after the first fire he saw McKaig with his hands slightly elevated just as he was leaving or had left the curb, and that a dark object fell as if from his hand, and which the witness thought was a pistol. Now, gentlemen, will you believe me when I tell you that this witness, Dr. Hummelshine, was the only witness on whose testimony this very indictment was found? And can it be believed by any candid mind that all he would say was not known to this prosecution, and that our friends refused to call him because they knew what he would detail, and knew that his evidence would go to establish the very defense of which they have declared to you and this court they were in profound ignorance until this case opened? In the face of a fact like that what becomes of all the affected astonishment of the gentlemen at what they have denominated the "pretended theory of self-defense"? And is not this worse than trifling with the lives of the people? Is it anything else than a barefaced, unblushing, unscrupulous attempt to drag this prisoner to the gallows, to hurry him to an early and horrible death by suppressing evidences that

Syester's Plea for His Client

establish his innocence, and depriving him of the means of salvation from a doom at the bare contemplation of which the very blood runs cold?

In a suit for property, in a conflict for dollars and cents, you may not and do not call a witness whose testimony may ruin your cause; but the spirit which pervades actions of that kind never before obtruded itself in a capital case, except in the hands and at the bidding of those whose names and memories are linked forever with the universal horror and detestation of mankind, because they prostituted the forms and privileges of legal procedures into the instruments of torment and death. And are not such practices as these against the honor, "government and dignity of the State"?

It is true the State has a profound interest in the preservation of order in society, and in protecting the body politic against violence, but its policy, mercy, and humanity require that when one of its citizens stands charged with a crime, against which it has denounced the forfeiture of liberty or life, every fact, every circumstance connected with the transaction which forms the subject of inquiry shall be fully disclosed and impartially unfolded. It takes no pleasure in the death of its citizens; delights not in the misery and sorrow of its people. When it assumes to drag any of the people before its tribunals charged with a crime, the consequences of which are so fearful and revolting as those denounced against that with which my client is charged, it does not assume the character

Classics of the Bar

of a mere bandying, party-litigant, gloating over the prospect of a success that will lay an adversary low in the grave, and dishonor his name and memory among men.

If it frowns on crime it ever turns with benignity and mercy to the accused. It wages no war of tricks, devices, and artifices upon the people. It requires that before a hair of the head of one of its people shall be injured under a criminal charge, every fact, every circumstance connected with the transaction, shall be rigorously and impartially explored.

While it employs all its power to bring offenders to justice, at the same time, in consideration of the liberty, the honor, and lives of the people, and the warm living affection that clusters around the accused, it demands that everything shall be fair, clear, manifest, and certain; and that before a feather's weight shall be added to the perilous state of the accused; before a single trace of anguish shall pierce the hearts of those who love him, or a single hair of his head shall fall, the very last syllable of legal proof shall be supplied, so that nothing dark, nothing oblique, nothing unknown or unexplained shall remain. It requires that everything shall be fully and faithfully unfolded, nothing withheld, nothing suppressed. Its policy, laws, and legal procedures are all impregnated with that divine sentiment which takes no pleasure in the destruction of the people, but would rather all should live, and none perish.

Sirs, if I am right in this, how fearfully and fatally

Syester's Plea for His Client

at war with the genius and spirit of law and justice, has been the conduct of these prosecutors, in attempting to lay before you a partial revelation of the facts you are sworn to inquire into, and in suppressing the testimony of Dr. Hummelshine.

Gentlemen, you may now begin to discover something of the temper and purposes of this prosecution.

Before I pass to the facts of this case, there is one other circumstance I must advert to: You will remember that we offered to show the seduction and ruin of Myra Black, the prisoner's sister, by the deceased. When that offer was made the prosecution resisted and objected to it as not competent evidence for any purpose in this cause; and upon the motion, and at the instance of our learned brothers for the State, the court refused to allow us to prove that fact. Therefore, Miss Myra Black was out of the case. No testimony of hers, and nothing relating to her history, conduct, or character was, or has been before you; all excluded at the instance of the State.

The opinion of the court, ruling out all that evidence, was yet ringing in our ears, when the gentlemen for the State called a witness to testify to the general character of that lady, to degrade and dishonor the very name and character of her, whose evidence the prosecution had just objected to, and excluded from the jury.

Can you conceive the motive that prompted such an offer after what had occurred? Do you believe that these gentlemen called that witness and propounded

such a question, under a conviction, or even an impression on their minds that such an inquiry would be tolerated for one moment? Do you suppose that our friends really thought that the general character of that ruined and unhappy lady had anything to do with this case? especially after they themselves had objected to the only circumstance connected with her ruined state, which would have given even a shadow of relevancy to such testimony?

Gentlemen of the jury, that was a plain, open, undisguised attempt to trifle with your intelligence, and wantonly to mortify the prisoner, his parents, and relatives, not by proving any *fact of her life*, but by laying before you the idle gossips and slanderous conversations of others.

I have no doubt the witness called (God help him, I cannot recall the creature's name) would have sworn to all that this prosecution required. I doubt not he would have told us that he was sitting down somewhere, perhaps on a store box, in an office, or on a tombstone, with somebody no better than himself, discussing and dissecting, destroying and degrading the character of this, and other young girls.

It is an easy matter for young gentlemen to do such things as that, especially when the girl herself may never hear of it, and when her parents are old and infirm, and her brothers far away, engrossed in the stern battle of life.

It is a safe occupation, too, because young girls are not often dangerous, and when you have no more

Syester's Plea for His Client

property than character or honor, you may bid defiance to the law, which denounces its heaviest judgments against the slanderer in pecuniary damages.

But, oh, how many pure names have been blighted, how many blameless characters have been tarnished by just such persons as these! How many pure but stricken hearts have felt the stings of a social attainder tingling in the warm currents that are throbbing there, all unconscious, that perhaps the very lips that flattered most, had whispered the lie that grew and grew until it overshadowed hope and life itself! The only wonder is, that the swift vengeance of Heaven can slumber while these ministers of hell are dragging the purest, fairest, and best of God's creation from honor, peace, and respectability, to shame and misery.

Outcasts from Heaven and from prayer, as such men are, I know that society sometimes compounds with their low transgressions; but what do you think, gentlemen, of a prosecution against the life of a fellow-citizen that will lay its hands on a thing so unclean, and make it the channel through which the unpolluted stream of evidence shall flow to a jury?

Let us now address ourselves to the law and facts of the case, of which you, gentlemen, are the sole judges under the Constitution of this State. With the law as well as the facts you and you alone must deal in making up the verdict here. You cannot receive a binding instruction on either from the court.

In criminal cases the jury, not their honors on the bench, but the jury are to judge the law, and a more

Classics of the Bar

solemn and responsible obligation cannot be imposed on men. You must not only find what is true in point of fact, as connected with this transaction, but having found what is true, you must apply the law to those facts, and determine whether the prisoner be guilty or not guilty. This is your exclusive duty. You will see at a glance the high and delicate grounds you occupy. From your decision there lies no appeal; what you shall determine is fixed, and there is no power under the laws of this State to revise your judgment or review the grounds of your determination.

A mistake here, a hasty ill-advised conclusion, an erroneous judgment, an omission to give due weight to any principle of law, or an indifference to, or ignorance of, any of the elements which, at law, go to make the crime of murder, may drag my client to death, lay sorrow and wretchedness on the humble hearthstone of a family already sufficiently miserable, and become the source of painful and unavailing regret to all of you during the remainder of your days on earth.

The prisoner stands before you to-day just on the threshold of life with all its bounding hopes, its fair visions, and bright prospects before him, and your verdict must determine whether all these shall be shut up and concluded forever in the solemn silence of the grave, or whether he, while the dews of his morning are yet fresh and bright upon his brow, shall be returned again to that life of usefulness, honor, and respectability on which he had just entered when its brightness was suddenly darkened by this prosecution.

Syester's Plea for His Client

It is a fearful thing to deal with life, and yet, as I have said from your judgment in this case there is no appeal; there is no revisionary power which can review its soundness, explore its errors, if error there shall be, and right the wrong which indifference or inattention may inflict—for such is the law of this State of Maryland. Indeed there is no part of this trial, neither the part that you perform, which is by far the most responsible and sacred, nor the part imposed upon the court, that can ever become the subject of review or revision by any other tribunal in the land.

If my client were before this court contending for his right to property, even of the small value of seventy-five or eighty dollars, yes, even of fifty-one dollars, everything connected with such a trial would become legitimate objects of appeal and revision before the higher tribunals of the State. If in such a case, a trial for the value of a horse worth but fifty-one dollars, originating in this court, their honors should allow an item of illegal evidence to be laid before you, that ruling would become the subject of revision before the high Court of Appeals of the State, and upon discovering error in such a ruling that court would send the case back here for a new trial.

If an item of evidence offered by a defendant in a case originating in our circuit courts, where the amount in controversy exceeds fifty dollars is rejected, that rejected offer, at his election, may be carried to the Appellate Court, and the party feeling himself ag-

grieved is clothed with the right to have the judgment of that tribunal as to the subject-matter of his appeal; but a defendant on trial for his life enjoys no such privilege under the laws of this "*good old State of Maryland.*"

If the inferior court determine against a prisoner on a question of evidence affecting his life, he enjoys no right of appeal, but if it concern not his life, but an article of property worth not less than fifty dollars and ten cents, he may invoke the enlightened judgment of the eight judges of our Appellate Court.

If in a question concerning character, and where a jury had returned a verdict of one cent damages, the party defendant feels himself aggrieved, either by the rejection of proffered evidence or the admission of evidence against him, or by the instructions of the court against him, he may have the entire matter reviewed before the appellate tribunal, and if there be error in any of the opinions of the *nisi prius* court, that defendant may have a new trial in reference to that one cent damage; but where character, honor, life, the affections of whole families, the joys and loves, or sorrows and woes of parents or children are involved, this "*gal-lant State of Maryland*" of ours gives no such right. There is no bill of exception in any criminal case in this State. Whatever is done in the *nisi prius* court in such cases is final. You may ask and obtain a binding instruction in any civil case, and if the court refuse your application, you may appeal and reverse that judgment, but in a case like this, if an instruction were

Syester's Plea for His Client

asked for *and denied*, that denial would form no subject of appeal.

Indeed, gentlemen, if the court should assume to instruct you without the consent of both counsel for State and prisoner, such instruction would not be binding on you; you would still be at liberty to disregard the instruction, and determine the law according to your own judgments. In view of all this, I am quite sure you will bear with me while I attempt, in the first place, to lay before you and make plain the principles of law that, in my judgment, govern and control this case. If I can aid you, gentlemen, in coming to a just conclusion on that subject there will be left but one other subject: the facts, on which you are to pass, and upon that I feel such great reliance in your capacity and intelligence to collate, digest, and comprehend them that I shall trespass but a few moments on your time in their consideration.

I have adverted to the differences made by the law of this State between a party contending for money or property and a man struggling for his life in no spirit of complaint (although I have always regarded it as a stain and blemish on a judicial system which prides itself so much on its justice and equality), but I have done so for the purpose of advertising you of the tremendous responsibilities that lie before you, and of admonishing you of the care and caution with which you ought to govern yourselves in traversing those paths of inquiry, on which your feet are now pressing, perhaps, for the first time in your lives.

Classics of the Bar

Now, gentlemen, the very first step in an inquiry like this confronts us with a doctrine as venerable and indestructible as the common law itself, a doctrine that meets the accused in every case, on the very threshold of his trial, that walks with him through the fiery ordeal of the prosecution, shielding and defending him against all presumptions, and like a blessing and benediction, raising up every presumption in favor of innocence.

It is in obedience to this principle that the whole burden of proof falls on the prosecution, and there it rests until the last item of proof is supplied. It never shifts, and this legal presumption of innocence is to be regarded by the jury, not as a mere theory or an unmeaning thing, not as idle talk or mere verbiage, *but as matter of evidence*, to the benefit of which the party accused is entitled. I say not as a myth, or something without any significance, but as evidence. I refer to 1st Greenleaf, sec. 34. Moreover, there is a wide difference in the standard of proof as applied to criminal and civil cases. In criminal cases the law has attempted to set up a standard of proof, and, so far as human thought and language can do so, it does define the degree and quality of evidence necessary for a conviction.

You will see, gentlemen, if you will give me your attention, how cautious, how careful the law is on this point. You will see every form of expression used, in order to set this matter in a clear light, and will notice the plain, direct, concise language employed to enforce

Syester's Plea for His Client

it. You will not fail to notice how solicitous the law is to draw broad, clear, deep lines of distinction between those evidences and proofs which govern us in ordinary civil cases and those strong, convincing, and manifest assurances which must be developed in cases of this kind. You will find that this is no case in which you are at liberty to scrutinize and explore mere probabilities; no room here for weighing the preponderance of evidence, nor considering the weight of prepondering evidence. Nothing but those proofs that generate conviction to the exclusion of all reasonable doubt; nothing short of such proofs and evidences can justify a verdict against the prisoner at the bar, unless at the hazard of the oaths you took to administer in its letter and in its spirit the law I am now about to read. I read from sec. 29 of 3d Greenleaf on Evidence:

A distinction is to be noted between civil and criminal cases in respect to the degree or quantity of evidence necessary to justify the jury in finding their verdict for the government. In civil cases their duty is to weigh the evidence carefully, and find for the party in whose favor the evidence preponderates. But in *criminal* trials the party accused is entitled to the legal presumption in favor of innocence, which, in doubtful cases, is always sufficient to turn the scale in his favor. It is, therefore, a rule of criminal law that the guilt of the accused must be fully proved.

Neither a mere preponderance of evidence, nor any weight of preponderant evidence is sufficient for the purpose unless it generate full belief of the fact to the exclusion of all reasonable doubt. The oath administered to

Classics of the Bar

jurors according to the common law is in accordance with this distinction.

In civil cases they are sworn well and truly to try the issue between the parties according to the law and evidence given; but in criminal cases their oath is well and truly to try, and a true deliverance make between the State and the prisoner at the bar." . . . For it is not enough that the evidence goes to show his guilt: it must be inconsistent with the reasonable supposition of his innocence; it is better to err in acquitting than in punishing, on the side of mercy than on the side of justice.

Now that, gentlemen, is but the general principle that lies at the foundation of all criminal trials. It is a proposition engrafted on the criminal law long before the book I have read it from was written; and, indeed, before any regular treatise on the common law was written by any one. It existed and was conspicuous when all other principles of law applicable to the investigation of crime were in utter confusion and obscurity, for we read in a note to that same section that King Alfred of England caused forty-four of his judges to be hanged in one year, because of their false judgments in this particular. I will read it to you, and I beg you to notice its strong, masculine language. It is taken from the *Mirror*, written at an early period, which "reckons it to be among the *abuses* of the common law that justices and their officers who kill the people by false judgments be not destroyed as other murderers, which King Alfred caused to be done, who had forty-four justices, in one year, hanged because of

Syester's Plea for His Client

their false judgment." From that day to this that principle of criminal law has been dear to all those who value the rights, the liberties, and lives of the people. Whatever else has changed, whatever else has been assailed, whatever else has fluctuated, this has stood its ground unmoved, unassailed, and untroubled.

It has stood by the accused for centuries, and in the midst of passion and feeling, of vengeance and oppression, when night hung low and wild over the dashing waters of persecution and oppressive power, it has thrown far out on the troubled scene the promises of hope and life, where otherwise despair and death had ruled supreme. It is the spirit and genius of the old common law of England, under whose auspices so many innocent men have successfully braved the frowns of power and walked unscathed and unharmed through the fiery furnace of prosecutions, marked and distinguished by every circumstance of power, vengeance, and oppression.

I invoke it, to-day, for this boy, and demand it in the name of that oath by which each one of you bound yourselves to the throne of eternal justice, to administer the law of the land in this case.

With this great cardinal principle before us, let us proceed to the examination of some of the facts as connected with the homicide.

My client has been denounced as a murderer and an assassin. He has been presented before this court and before you as having gone stealthily about the streets of Cumberland, and in the neighborhood of the

place of McKaig's business, peering into windows and skulking into doorways, waiting and watching to take his victim at disadvantage, and without warning to set upon and kill him. And terms, which were galling to a sensitive mind in the extreme, have been employed to describe the transaction, which has been unfolded to you by the evidence, and the main facts of which I will now recall to your recollection, and then apply the law specifically applicable to those facts.

On that October morning you find the prisoner walking along the south side of Baltimore Street, in Cumberland, westward. About the same time McKaig is found going eastward along the north side of the same street. When, from the distance that separated them, it was probable that each one could have seen the other, McKaig leaves the side of the street he is walking on, and deliberately crosses over to the side on which Black is walking.

Now, gentlemen, if such a fact as that had been proven as to Black, what a theme for declamation and denunciation would it not have furnished to our friends prosecuting in this case?

Why, because he walked past McKaig's place of business that morning, and dared to turn his head or eye toward the windows of that foundry this prosecution has attempted to extract from that circumstance strong and satisfactory proof that he was there, in their own expressive vernacular, "skulking." Because he passed that morning along Center Street, as he had

Syester's Plea for His Client

passed hundreds of times before, and, as the proof shows you, he must pass to go into the business part of the town, he is described as lying in wait.

Because he was seen standing on the step, and in the doorway of a public store, on the principal street in Cumberland, when McKaig was nowhere in sight, he has been denounced as having concealed himself for the purpose of avoiding the observation of McKaig, the better and surer to effect his murderous purpose of springing upon him and dealing death to his person.

If it had, or could have, been shown that Black had crossed over to the side McKaig was on, you would have heard the loud, indignant, and triumphant declamations of our friends on the subject until this court hall would have echoed and re-echoed, with their noisy clamor for his life. And, indeed, it is a significant fact; one that would have been ugly enough for us to have explained, but its significance is in no respect diminished, because it was McKaig and not Black who crossed over.

You will remember, gentlemen, that that was not the first time McKaig had gone out of his way to intercept the prisoner. You have heard enough to satisfy you that McKaig not only did not hesitate to go out of his way to meet Black face to face, but that on one occasion he went far enough to have provoked an encounter had the prisoner been less orderly and peaceful in his disposition.

You cannot overlook the affair at Ferguson's saloon, where the prisoner was wantonly jostled and insulted,

Classics of the Bar

and where he reminded McKaig that that affair constituted the second insult he had offered that day. What the first was we have not been able to show you. You cannot fail to remember, also, what had occurred under the eye of John Long, and the communication made by Long to Black.

If these things had been done by Black toward McKaig; if Black could be shown to have previously gone out of his way to encounter McKaig; if he could be shown to have wantonly insulted him, and have stood and waited and watched for him, and then to have followed him along the street, and then, on that morning on the 17th of October, to have left the side of the street he was walking on and gone over to that on which McKaig was passing, these gentlemen prosecuting would have found in all these things an argument powerful and overwhelming on the point that the crossing and the meeting was with no peaceful purpose, but that it was the offspring of a deliberate, studied, settled purpose to force an encounter on an unwilling and unoffending man.

But do these acts lose their significance because they were done by McKaig and not by Black? Is there any reason why they should be supposed to indicate a motive or design, as to one, and not as to the other? Are you to presume that McKaig was without a motive when he crossed that street? But can you hesitate in discovering that motive in the light of his previous behavior toward the prisoner?

We must judge men by their conduct; you have been

Syester's Plea for His Client

invoked to judge the prisoner by his; you have been told that his walking by McKaig's foundry that morning, his standing in the door of a public store in broad daylight, furnish indices of a motive on his part to lie in wait, and conceal himself, the better and more surely to effect murderous purposes. Apply the same judgment to the conduct of the deceased; subject his acts to the same scrutiny to which they would subject those of Black, and your inferences will not be of that overstrained, far-fetched character which, I am sure, every candid mind must say marked the conclusion drawn by the prosecution from the acts of Black.

Here, gentlemen, are acts that lie close to motives; here is conduct that is hardly to be misinterpreted. Let us go one step further. McKaig has crossed to the side on which he must have seen Black; they meet face to face; there is no living creature who saw the beginning of that encounter; not a single man, woman, or child who swears at what time either of these parties drew his pistol. That both were armed is too plain for argument. That each drew his revolver is equally plain. But who drew first? Which of these two made the first hostile demonstration no human being is found to tell us.

That is a matter of inference and inference alone; it is a matter of presumption, and of presumption alone; it is a fact to be inferred, or to be presumed; it has not been shown by any direct proof. It is to be presumed, it must be inferred, by circumstances and circumstances alone. It is the all-controlling fact in

Classics of the Bar

this case; the central fact, around which the interest and issues of this case congregate and thicken. But it can only be ascertained by circumstances, circumstantial evidence. How are we to deal with it? What is the rule of criminal law when we come to deal with circumstantial evidence?

My brother Nelson has read to you the rule on that subject, as laid down by Baron Alderson, a rule which is in perfect harmony with the spirit of that great fundamental and unalterable rule which I have endeavored to impress upon you. He has read that rule from one of the ablest of law writers. Before you can convict my client you must be convinced that he commenced that fight by first drawing his pistol. And the conviction of that fact, on your minds, must be something more than a rational conviction; it must be, in the language of the rule read, "the only rational conviction which the circumstances will enable you to draw."

Gentlemen, are you at all convinced that Black first drew his pistol? Do the subsequent occurrences satisfy you of that fact? Do all that preceded that meeting, all that attended it, and all that followed it produce upon your minds the conviction that Black was the first to show hostility? And is that the only rational conviction which the circumstances enable you to draw?

Just look at this case! At this point you are left to find your way to the heart of the case, to its thinking head and beating heart, by the light of other facts—

Syester's Plea for His Client

by circumstances. You are to find that Black commenced that assault, not from what anybody saw, but from other facts. What other facts? Because he was armed? Why, McKaig had three pistols to his one.

Consider for one moment this circumstance: seven witnesses called by the defense saw a pistol in McKaig's hand, or saw it falling from his hand after the first fire, and before the second. It is in proof before you that the first fire took effect in McKaig's side, and passed nearly through his body.

Do you believe that after a shot like that, shocking and paralyzing his entire system, and shattering his strength, he was able to have reached behind him and drawn a pistol from his holster? No, no; that pistol which fell from his right hand after the first, and before the second shot was delivered, was in that right hand before any shot was fired—before Black fired at all.

It is absolutely impossible to conceive how any other conclusion can be drawn. The ball that struck McKaig was as large as an ordinary Minie ball. The parties were not five feet apart; the ball passed nearly through the body, and under the sudden, shattering shock and prostrating paralysis of that deadly fire, and in the brief interval that elapsed before the second shot, it is incredible that McKaig, or any other man in his situation, could have reached behind him and drawn a pistol. That pistol was in McKaig's right hand before he was shot. And this view of the case is powerfully confirmed by the testimony of Enos Davis.

That witness saw McKaig cross the street; he saw

Classics of the Bar

him when he reached the curb at Ryan's corner, and there he saw him change his cane from his right to his left hand and reach back. He saw more—he saw something “glisten.” Now, that took place, according to these maps, some ten or twelve steps from the place where he was when attention was arrested by the first fire. Black's fire could not have been delivered until the parties were within four or five feet of each other, certainly; after the first fire, and when attention was arrested, McKaig was found some ten or twelve feet beyond the place where Davis saw him change his cane and reach behind for his pistol.

At what point of time that pistol was drawn cannot be ascertained with precision. But every principle of law, the spirit and the very letter of that great rule of criminal law I have just adverted to, demands that no presumption shall be indulged in against the prisoner; that the burden of proving his innocence is not on him; but that the whole matter must be revealed to your minds by the State, in such a manner, and by such strong, conclusive, manifest proofs, as to remove all doubt on the subject.

Can you look upon this scene, and declare that all is plain, clear, and certain?

Are you satisfied by the proofs that Black commenced that affray, by first drawing his pistol? Has the State proven that fact to your entire satisfaction? Sirs, the probabilities are all the other way. The law as to self-defense is scarcely susceptible of an accurate definition. Indeed, the law of self-defense is one that

Syester's Plea for His Client

is not and cannot be defined in men's books. It is written in men's natures, stamped upon their hearts, and each case presents its own peculiar and distinguishing circumstances, and depends upon them. It is fashionable for prosecutions to dwell on old definitions, as found in very early writers on this subject, and they are full of expressions about "retreating to the wall," and "declining the contest," and refined, artificial distinctions, which are painful to dissect, and which profess to lay down rules for the government of a man's conduct and action in moments of extremity and peril, when, to pause and recall to mind such artificial, technical rules, would be set down by the world as mere sheer idiocy itself.

Gentlemen of the jury, when these rules, these absurdities about declining contests and retreating to walls prevailed, they were founded on a view of the relations of man to government and society wholly different from those prevailing now. They are the offspring of that sentiment which made society and government everything and man nothing; when the life of a human being was regarded as the property of the government, and when the slightest infraction of the police regulations of society was esteemed the most grievous offense; when men were called on and compelled to sacrifice everything, property, honor, life itself, for society and government; when society was supreme and the individual nothing, when man was regarded as existing only for government. Hence it was that the government would not excuse a homicide,

unless the slayer had retreated to walls, because its police regulations were considered higher, more sacred and holy than the lives of the people. But when a truer and sounder view on this subject began to prevail, when man's relations to society and government became emancipated from the doctrines and sentiments that dwarfed his individuality and dwindled him into nothing beside the State, when men and judges began to learn something of their own personal importance and feel the promptings of that individuality which asserts its own dignity and importance, when it began to dawn that government was created for man and not man for government, then these old, dry, technical rules began to give way, and to-day the doctrine is this: That if the slayer had reasonable cause to apprehend, and did apprehend danger to his life, or even great bodily harm, the homicide is excusable. That is the law prevailing all over this country. It has found expression in various other forms, but the whole subject will be found to resolve itself into precisely that statement.

(At this point Mr. Syester read from Wharton on Homicide, pages 228, 229, and 233; and from Judge Parkins's charge in Selfridge's case.)

Much, indeed I may safely say everything, depends on appearances, more especially when those appearances are created by the party killed.

Gentlemen, adopting the language of an eminent judge in Pennsylvania, in delivering the opinion of the court in one of the cases I have adverted to, "Look

Syester's Plea for His Client

you into the heart of the defendant at the time of the transaction; search out his motives, . . . and say whether, constituted as nature made him, he had reason to believe, and did believe, that he was in serious danger." Go with this prisoner, as he went to his humble, ruined home that Sunday night, with this heavy load of shame and bitterness on his heart; stay with him as he wrestled all night long with the hideous beliefs that were ever present in all their deformity before his mind, and, as morning dawned, wearied, wasted, and prostrate, with the presence of a bereavement too fearful for description, he nestled in his misery and wretchedness close to the faithful and now bleeding bosom of her who bore him to the world, and there fell into the short and troubled slumber, from which he was so soon summoned to the contemplation of a woe too bitter, too terrible for description. And let me ask you what impressions do you suppose, respecting the sentiments, dispositions, and temper of McKaig toward him must have been uppermost in his mind? To his apprehension, to his belief, everything that made life valuable had been destroyed. His very name had passed into a byword of reproach and infamy; the honor and peace of his home and parents were gone, and the author of all this woe, this indescribable wretchedness, had wantonly insulted and manifestly attempted to force him into a bloody and deadly conflict. I doubt not but at that moment the scene at Ferguson's came back upon his mind with a force, significance, and emphasis never before appre-

hended. I doubt not that the communication made to him by Long the evening before revealed to his distracted apprehension a malignity and a settled purpose to draw him into a deadly issue, far more clearly than you or I, not actors in the drama, can possibly conceive of. Conditioned as he was, these circumstances reappeared to his mind with tenfold power, and clothed with a hundredfold more meaning than they did when in a calmer state. They became known to the prisoner, and you see the prisoner, with all these beliefs and all these impressions on his mind, confronted by the man who was the author of them all. You find that man leaving his side of the street, and before he met him changing his cane from his right to his left hand, and with that right hand reaching back where his pistol was; the same man who had purposely and wantonly insulted him before, who had stood and waited and watched for him, who had destroyed all the green places in his memory, dried up every source of enjoyment, and laid tears, misery, and distraction on his hearthstone. You see that man just in front of the prisoner, the man that he then was to the prisoner, full of hostile, deadly intents, and in the face of all this we are told the prisoner should have waited for more; that there was not enough, to his apprehension, to have generated a reasonable belief of serious bodily harm, or death itself. Why, gentlemen, in a case like this, can there be doubt as to what induced the prisoner to fire? If there is a doubt on that subject, by the great, indestructible, and overshadowing principle

Syester's Plea for His Client

of the common law, you are bound by your oaths to give the benefit of the doubt to the prisoner. But, be assured, gentlemen, that no common circumstance suddenly transformed that quiet, peaceful, and gentle disposition into a death-dealing minister. No common passion swept that bosom, which had always been the abode of peace and order. No ordinary apprehension overwhelmed that will which, from early childhood and amid the most trying scenes, had ever cherished the sentiments of amiability and gentleness, and had shunned every temptation to violence and disorder. If you are left in doubt, either from the want of direct or the force of circumstantial evidence, as to the origin of that deadly encounter, let the history of the prisoner's life, let the gilded volume of his character, let the living memories of his life and its attributes, let these resolve that doubt. If you must receive more satisfactory evidence upon that which the State must not leave in doubt, if you must have assurances on a point to which the State and the State alone must respond, with clear, manifest proofs, if you will go beyond the strict and solemn injunctions of the law, and overleap those broad, deep barriers, erected for the protection of our lives and liberty, and will explore the forbidden fields of inquiry, if you will have it that, by some means, this doubtful matter must be cleared up, if the State shall demand of us that we shall make clear what has been left in obscurity, gentlemen of the jury, we do not, we will not shrink from the issue, although the

Classics of the Bar

law, of which you are the sworn administrators, does not demand it at our hands. And, in response to such a demand, we point you to the dispositions manifested by the deceased toward the prisoner. We point you to a character on the part of the prisoner the like of which has never before been unfolded to the admiration of a jury. We point to all these evidences, and, by their imposing and substantial power, we confidently await a triumphant solution of that which we are not called on by any law to solve.

I am aware that our friends assume to get over all this by referring you to the prisoner's repeated shots and to his declarations when that bloody scene was shrouded in death. But who shall assume to measure the distance a man shall go when moved by emotions and beliefs such as were sweeping the prisoner along when that encounter took place? Who shall assume to say now, when the whole scene is calmly and dispassionately reviewed, and, piece by piece, unfolded to us, who shall assume to say how many shots ought to have been fired and when the prisoner should have stopped? With the beliefs that were upon his mind, with the appearances that were before his face, he could not and did not stop while his adversary was on his feet.

Remember, gentlemen, we have all been here for near ten days, inquiring into matters that were crowded up into not more than twenty seconds; and it is preposterous to attempt to point out now what might or could have been seen or known by the prisoner, or to

Syester's Plea for His Client

what conclusion he should have come when the interests and investigations of days were all crowded up into an instant of time. Why, gentlemen, do our friends for the prosecution expect that the prisoner, or any other person even witnessing that transaction, not participating in it, to have been so calm and capable of reviewing the different stages of that affair as they, or you, or I am now? Have they forgotten, and can you forget all that must at that moment have been crowding and thronging the mind and memory and stirring the emotions of the prisoner? Can you believe that the overwhelming sense of wrong, injustice, and outrage, which had stunned him and roused all the deepest feelings of his soul, left any place in his mind for deliberation, calmness, or composure?

Is it at all likely, after all he had heard and seen and felt, and in the presence of what was too manifestly before him, he was capable of judging as you and I now may judge, and coming to the same conclusions the gentlemen prosecuting have come to?

Only consider this matter for a moment. You are, all of you, men of respectability, and know the value of an untarnished name, and a pure and virtuous household. Suppose there should suddenly be unfolded to you the story of the ruin of your home, the dishonor of your name, the infamy of your wife, or sister, or daughter, how calm, how composed would you be? That would be revealing to you a sense of wrong, a situation of calamity, more unsupportable than if you had lost every dollar you ever possessed.

Classics of the Bar

Gentlemen of the jury, when the very jewels of our names and household are prostituted into the mere toy, to minister to the depraved lusts of others; when the wife, daughter, or sister has been dragged from her character and virtue down to shame and dishonor; when all society can point the slow-moving finger of its scorn at the home that was once the abode of purity and virtue; when our homes shall be shunned by the pure and blameless in life, and be converted into the very sties of infamy, and there shall remain nothing of them, save the crushing fact that all which gave them their charm and delight are gone, and gone forever; oh! when such a doom shall overtake our homes, and blacken and desolate our hearthstones—then, then will it be that we can realize, in all its power, the hideous deformity of a woe that, in spite of habit, education, and prayer, shall turn our sweetest thoughts to bitterness, and our best-ordered purposes to madness!

It was from the contemplation of such a scene of which language can give but a faint outline, that my client had just turned—aye! its bitter waters were upon him, when he was encountered that morning by the deceased. That he had passed that long, sleepless night of misery in distraction, none can doubt. And he was still treading those dizzy, narrow heights, to which he had been swept by the storm of the most fearful of all calamities, and from which even to look was madness! No! no! he did not, he could not stay his hand, while there remained the slightest chance

Syester's Plea for His Client

that his adversary, and the enemy of all that was true and lovely to him, might have power to execute the deadly purpose he had so persistently, so fatally sought.

Our learned brothers affect to draw unfavorable conclusions from the expression used by the prisoner after the body of McKaig lay dead in the street. If such conclusions had been fair and legitimate, do you believe this prosecution would have struggled as it did against the admission of those expressions in evidence before you? You will remember that when I asked Dr. Healy, on cross-examination, to declare all that was said, as well as all that was done, by the prisoner on that occasion, we had a long discussion before the court as to whether any declarations by the prisoner were admissible. And now, after having warred against this as evidence, our learned friends take it up as one of the very props of the prosecution. Well did these gentlemen understand the force and power of that expression: "Now you will seduce another sister of mine!" "I have killed the man who ruined my sister."

Gentlemen of the jury, may heaven, in its great mercy, spare you and me, and ours, the bitterness of such an expression. I have seen my children cold and shrouded in death. I have stood by their open, early graves, and have felt all the bitterness and desolation of bereavements, which I thought too hard to bear, and in my anguish and wretchedness have almost questioned the mercy and providence of heaven

itself in thus overwhelming me with the waters of bitterness and woe. But I can say, in all truth and candor, that I would welcome them to their graves, rather than behold them before me infamous, ruined, dishonored, and degraded, as this wretched prisoner felt and knew her to be, who, up to that hour, had been to him all that was pure and blameless in life. That the sense of that calamity was uppermost in his mind, and deepest and strongest in his heart, no one can doubt; and it is not to be wondered at, that when death had settled on the overwhelming excitement of that transaction, the remembrance of a ruined home and a dishonored sister should have risen up and to his mind presented itself as all sufficient as a justification for what he had done.

Gentlemen, I can conceive of nothing in life more calculated to excite passion. Certainly, there is no disaster, no misfortune in life so utterly irretrievable; no sorrow so crushing; no spectacle so maddening as that which unfolded itself to the mind of my client. It is absolutely impossible to contemplate the bare possibility of such a calamity with composure. Our minds grow wild and feverish at the bare thought. The purposes become unsettled at the most remote prospect of a bereavement so fearful and harrowing as that. The will shakes in its citadel, and order and reason totter in their strongholds at the bare mention of a destruction so fearful in its desolation, so incurable in its woe!

The learned gentlemen for the State have read law

Syester's Plea for His Client

to you, to the effect that there are circumstances and occasions when, on account of the heat of blood, the law steps in and reduces the grade of killing. But we are told that the law takes no account of the hot blood produced by a trespass like that to which the prisoner felt himself subjected, a trespass on the finest, the noblest, and the holiest affections of the human heart. The sister whose purity you have enshrined as a pure and spotless image in your heart, on whose love and devotion you have reposed from childhood to manhood, may be snatched from her innocent grace; dishonored before your face; betrayed, wronged, set adrift on the wild and tossing sea of abandoned and riotous passion; shunned, scoffed at and jeered at by the veriest outcast that prowls the streets; and you are gravely told that these laws we live under make no account of the stirring of blood that such a spectacle, such a trespass upon all your love and affection produces! But if two men fall into a drunken brawl, and low and violent passions are aroused by a blow, the law, in tender consideration for the hot blood, heated by brutal, vulgar habits and low indulgences, considers that the death that ensued from such a scene is not murder, but manslaughter. But when the blood is heated by arousing emotions, and inflaming into passion feelings and sentiments that have their seat and origin in the purest and best affections of our common nature, and under such impulses a deed of disorder or death ensues, these prosecutors tell us the jury must take no account of all

that. You are walking the street, and a man purposely jostles you there—and this is one of the very examples read by the prosecutors from 122d sec. of 3d Greenleaf—and in the heat of blood thus wantonly provoked, you slay the jostler; the law spares your life. But that same man might have entered your household, in all the confidence of intimate friendship, and there ruined your peace and the peace of your whole family, and destroyed everything that was lovely and lovable about it; and if, under the impulses of a woe, too unutterable for human lips, you had destroyed the author of a misery like that, you would be met with a legal presumption, that you were all the while perfectly calm, absolutely composed, and entirely capable of forming deadly, deliberate, and malicious purposes. A man may strike and scar your face with an unprovoked blow, and you kill him on the spot; but you are not guilty of murder, because these law-books tell us of a weakness of the human heart of which the law is tender, “very tender,” so that no malice will be presumed, and the hot blood provoked by the blow reduces the grade of your offense. But that same man may scar your name with shame; he may strike a blow into your quivering heart that shall open up a stream of agony so bitter, so exhaustless, that no time, no consolations can heal it; and if, under the impulses thus wantonly engendered, you kill the author of a desolation like that, we are told that the law makes no account of the emotions and passions that blinded reason and subverted judgment, de-

Syester's Plea for His Client

throned calmness, and held the will in thralldom. A man assails you along the road, and attempts to rob you of a fifty-cent government note, and if, in defending yourself from such an assault as that, you kill the assailant, that is justifiable homicide, because it is in defense of your property. But we all stand here with our wives, daughters, and sisters—these priceless jewels of our hearts—all exposed; the practiced hand of any gilded seducer may snatch them from our bosoms, tarnish and degrade them, and then, with scorn and derision, throw them back upon us; and these laws, we are told, declare all that nothing—nothing that you have drained to its last dregs the bitterest cup that misfortune, injury, and outrage ever presented to unwilling lips.

Gentlemen, let us clasp hands just here, and if it is true that these laws of ours ignore the truest instincts of our hearts, and banish the purest, dearest, and most cherished affections of our natures, let us trust our lives and souls to the mercy of a just God, rather than be subject to such calamities. Let our graves be dug for us all over the land, and let the destroyers of our homes live surrounded by the honors and sustained by the honied commendations of a society that can tolerate principles of law like those I have but imperfectly described. It is a fine thing to talk about the peace, government, and dignity of society, and quite fashionable to indulge in discourses about the order, the law, and well-being of the people; but believe me, neither the peace of the people, nor the dignity of the

Classics of the Bar

State, nor the order or honor of society can be preserved under the administration of laws like these. What respect! what reverence! what honor! can a people entertain for a State or society which casts the garments of wretchedness on the wronged, ruined, and betrayed, and leaves them to deal in loneliness and desertion with their sorrows, and at the same time opens all its saloons of refinement, all its resorts of fashion, and all its posts of honor to those whose robes are stained with transgressions, and whose hands are hardened with the ruins they have wrought on the weak and unprotected!

Let no man take his stand amid the ruins of the first, the highest, and holiest laws of human nature, and preach to us about the broken statutes of society and the violated sanctions of law.

Gentlemen, there are laws other than those written in these books, judgments other than those found in the precedents of courts. There are laws, principles, and sentiments as imperishable and indestructible as human nature itself, and which no system of jurisprudence can safely assume to undervalue, and which none has ever yet been able to ignore. There are laws graven on the human heart, by a mightier finger than ever traced the letters of your statutes, and imposed by a diviner sanction than ever fell from human lips; and these laws must be vindicated and preserved at every hazard, for society cannot exist one hour without them. The laws I am speaking of are those which are rooted and grounded in the purest and best affec-

Syester's Plea for His Client

tions of our natures; which bloom and blossom under the sacred influences of our homes; which, starting amid the loves and purity of the family circle, broaden and deepen into love of neighborhood, and growing with our growth, and expanding with our experiences, ripen into love of country.

I know that the early law, framed by the Norman conquerors of England, utterly ignored all the domestic affections, and all the sanctities and sublimities of our common nature. I know that these sentiments I am speaking of found no place, no recognition whatever in a system of jurisprudence that was founded on considerations of property alone. They were all excluded by the spirit of an age and the power of a race of conquerors who themselves appropriated the most sacred relations of life to the gratification of rapacity and lust. There was, under the laws set up by the Norman conquerors of England, no law, no punishment for the destroyers of families. Those laws were molded by the oppressors of the people, the conquering lords and proud, overbearing barons of the manor, who rioted in ravishment and the destruction of homes, and whose ill-gotten and bloated estates enabled them to pay, without feeling it, the slight pecuniary fines imposed as a penalty for violating and destroying the happiness and the honor of the people. Indeed, one cannot turn, without a shudder, to those pages of the old laws of England, where the domestic loves and natural affections, the sacred beatings and outbreathings of the heart are brought into contact

with the law. But, after long years of struggle and conflict, these relations and affections, and pure and honored sentiments have been emancipated from the thralldom imposed upon them—they are beginning to take up their proper position among those great interests and substantial considerations on which society itself rests, and are receiving at the hands of an enlightened, moral judgment that high rank and that imposing station which their importance entitles them to. And whatever may be the artificial rules, founded on a view of society existing in the rude and early civilization of England, when the criminal code was framed to encourage and shield the ravishers and destroyers of homes, and not to preserve their purity and honor among the masses; whatever may be contained in the judgments of the assizes of an age when the husband and the father had no other remedy for the ravishment of his wife or daughter than a writ of replevin to rescue her from the lust and rapacity of some haughty oppressor; nevertheless, the judgment and heart of any man, on whom even a glimmering of the civilization of this age has ever rested, will pronounce the crime of that man who invades the peace and sanctities of our homes with the desolations of seduction and shame, to be the most heinous that can stain and blacken the annals of transgression. And whoever assumes to ignore these domestic relations and natural affections, and these sanctities of our common nature, which are so closely bound up with the happiness of the people, the honor and purity of

Syester's Plea for His Client

society, and peace and order of the State; whoever, in the madness of his passion and lust shall darken our homes with that hideous shadow which must rest in shame and dishonor on all that we most love and cherish; whoever shall turn the homes of the people into desolate and waste places, dry up all fountains of enjoyment, poison all sources of delight, and leave there nothing but maddening memories, and prospects all blighted and blasted with misfortune; gentlemen, such a man is a monster more dreadful, more hideous than the stealthy assassin. Beside such a crime murder itself may clap its hands in triumph. And the State, society, or government that can tolerate crimes like that, or can shield transgressors like these from the righteous vengeance of an insulted, outraged, and ruined people, only mocks you when its representatives prate about order, peace, and good-will among men.

Let no one do me the injustice to suppose that I am undervaluing the common law of the country, or that these remarks are made in sympathy with that wild sentiment which would set up the fanaticisms of partisan strifes in the place of the great principles of security which lie at the foundations of stable, fixed law. Do not impute to me a disposition to withdraw this subject from the imposing sanctions of the common law of Maryland and set it up in the light of those passionate excitements which are in conflict with all peace, and at open war with all order among men.

I have presented these thoughts for the purpose of

Classics of the Bar

exhibiting to you the harmony that always must prevail between the written laws of the people and the living, glowing, and indestructible laws of their nature; not their passions which deprave, but those great, universal, and honored principles which elevate and ennoble the race. And I say that this harmony does prevail, that the common law does not ignore these principles, but takes them up and incorporates them into its own being. For this thing, called the "common law," is not a cold, dead stony incrustation, cramping and deforming all the developments of life, and holding humanity to the condition in which it existed centuries ago, treating mankind as endowed with no law of development, and making no room for such development. But the common law is itself a living organism, which expands with the developments of society, keeps pace with its progress, and which, while it looks with no favor on innovations and change, nevertheless takes up and appropriates to its own life whatever experience, reason, and practice shall demonstrate to be true and good, politic and just.

I know that there is a sentiment, which supposes itself to be seated high in authority, and which assumes that it, and it alone holds the peace of society and the order of State in its own hands; a sentiment which ever and anon assumes to step down from its lofty place and utter a dignified protest against what it is pleased to denominate principles destructive of society, and subversive of the peace of the State; a sentiment which flatters itself that it is doing high service when it

Syester's Plea for His Client

can repress disorder among men, but never heeds the costly sacrifices that smoke and bleed on its altars; and I know that this sentiment will turn away with derision, and a sneer from the thoughts I am feebly uttering, because in its pride and self-sufficiency it will pronounce them pregnant with mischief and full of social discord.

But, gentlemen, when the day shall come in which a spectacle like that which unfolded its shame and horror to the mind of Crawford Black, on the day he was told of his sister's ruin, shall be contemplated by the American people with no other emotions than those of ordinary regret; when the day shall come in which the faith, virtue, and purity of our wives, sisters, and daughters shall be but the wares with which licentiousness and depraved lusts shall trade and traffic, and the very names we bear shall be but the by-words of scoffing libertines; when our homes, no longer the abodes of virtue, where character is molded into beauty, shall become the lurking places where depravity and sin and shame shall hold their stealthy carnivals; in a word, when their lofty breathings of thought and sentiment, which yet enfold and panoply the honor of our families, shall be broken down, and wild and riotous passion shall rush in where purity and beauty of character dwell, then there will be opened upon us all the floodgates of a ruin and desolation broadcast, dire, and inevitable. Let me hear no more about principles subversive of society, and doctrines that uproot its order and peace or impair the dignity

Classics of the Bar

of the State of Maryland. For after all, gentlemen, who does not feel and know that tendrils of our serenest joys, and the roots of the peace and order of society, twine around the thresholds and warm beneath the hearthstones of our sacred homes!

And so long as these homes shall present a quiet and smiling refuge from the toils and cares of life; so long as the purity and virtue and beauty of character of the wife, the sister, and daughter shall remain to welcome the husband, father, brother, and son to their cheerful joys and smiling fireside; so long as the kindly charities of blameless and loving hearts are wreathing amid the hard realities of outer life a bower of blissful repose, where the jaded and weary spirit may forget the tossings of an ever-heaving present in the holy anticipations of a sorrowless and endless future; so long as the quiet dignity of the mother, the twining tenderness of the sister, and the budding loveliness of the daughter blending in one hallowed trinity shall grace the household altar and adorn the household board; so long as these shall remain in all their integrity and conservative and purifying power; so long will the happiness of the people and the peace and order of society remain as firm as the rooted rock.

Disappointments and losses may still occur; but when the pride and heritage of the heart are laid upon the family altar the evils of the outer world are less heavily felt, because they leave untouched the greater and richer interest. The sorrows of death may shroud all life's scenes with gloom, and dash all its cups with

Syester's Plea for His Client

bitterness; but while there shall remain to us the precious memories of the pure and blameless lives of those we loved, but whose forms are forever hid, the sweet sacred images which affection loved to cherish will come back—

Apparelled in more precious habit,
More moving, delicate, and full of life
Than when they lived, indeed.

When those whom we love die with their honors fresh and bright about them, they somehow become omnipresent and immortal to us. Indeed, death brings them nearer to our feelings; raises them to a higher place in our memories and affections, and immortalizes our affections for them.

Moreover, it is always in such seasons of gloom and sadness that kindly hearts are close beside us, to mingle their sympathies with our griefs; and there, too, will ever be found the faith and consolations of our blessed religion, under whose ministrations the loneliest, nakedest grave becomes a sunlit bank, bright and empurpled with the blossoms of eternal life.

“The Lord giveth and the Lord taketh away,” has swept down to us through the long vistas of the past, from the earliest dawn of recorded things, and that consolation will continue to abide with the stricken and sorrowing until the last syllable of recorded time. But what consolation can soothe the heart that writhes under the sting of a home poisoned with shame and

infamy? If death immortalizes our affections for those we love, infamy annihilates them.

If the prisoner had been told that his sister had died, the loss, though bitter, would not have been baleful, not deadly, for though cut off from the object of his love and trust, he would still have retained those sentiments for her in all their strength and beauty. It was not with his sister, but with his faith in her that he was forced to part; it was not herself, but her honor and name that was dead forever to him!

Upon such a nature as his, the sadness of a bereavement like that settles into the deep, dark gloom of a wounded spirit, and life will be almost a burden to be borne, not a blessing to be cherished. The dawn of life is around him in all its freshness and beauty; but its morning hymns, and the sweet strains that charm away so many of its sorrows are all silent—hushed in the presence of a bereavement so sad, so painful, that its bare mention is a blighting torture to him. But do not touch that life with your verdict, gentlemen, for it is now doubly dear to those who love and cherish him; the life of this anxious father, who has sat by his side, day by day, during this trial, is more closely bound up with his than ever. And the same faithful bosom on which he wept away the transient sorrows of his childhood, now yearning toward him with more than a mother's love, awaits your verdict to enfold him with its boundless affections, and administer its consolations to this crushing bereavement of his riper

Syester's Plea for His Client

years. You cannot be insensible to the fact that your verdict is looked for with no common interest.

It is not simply that it will give life or death to this prisoner, and joy or sorrow to the anxious hearts that here cluster around him; but it is because profounder issues than the life or death of any man are embarked on that verdict, and considerations far more important than the joys or sorrows of his friends stand thick and trembling around this case. That verdict will give us to know what estimate a Maryland jury places on the honor and securities of our households, and how dear they hold the loves and affections which bloom and ripen under the roofs of the unnumbered houses of this happy land.

There is not a home in all this broad land that will not feel the rude touch of a verdict which consigns this prisoner to the grave, startling into dismay the joys and nameless benignities that nestle amid its loves and affections.

There is not a brother whose faith and trust have reposed amid the pure delights of a sister's love, who will not feel, in the death of this boy, under this prosecution, that a frowning shadow has fallen and rests between him and the purest memories and most sacred recollections of his life.

Your verdict will stand a monumental point in the history and recollections of this people. "Nor marble, nor the gilded monuments of princes" shall outlive its powerful influences for good or evil. It will stand the living record of your memories, and tongues to be

Classics of the Bar

shall rehearse that verdict when all the breathers of this world are dead.

There can be no room in your finding for distinctions as to the grade of homicide; under that finding the prisoner must live or die. If the prosecution is right he must die; if wrong he must live and be free. The issues of life or death are as distinctly staked upon your verdict as they were when the prisoner stood face to face with the same awful issues on the morning of the 17th of October, 1870. But, notwithstanding the power and determination of this prosecution, I still cling to the hope that your verdict will release him from the long imprisonment he has endured, and restore him once more to the hopes and trusts that are embarked upon his character. And, seeing that his early life is so clouded with misfortune and gloom, I am sure you will join with me in the earnest hope that, in his later days, when the evening rays of life shall fall upon him, he may not be found to give forth the same mournful strains that have so sadly greeted the early messengers of his morning.

At the conclusion of Mr. Syester's argument, which had held the audience spellbound, a recess was taken until the following morning. When the session of court reconvened, Hon. D. W. Voorhees delivered to the jury the address as given in Volume I. He occupied more than three hours in its delivery, often moving those present to tears. Hon. Milton Whitney then made the closing speech in behalf of the prosecution. The jury retired, and after remaining

Syester's Plea for His Client

out one hour returned into court with a verdict of not guilty. When the verdict was announced, it seemed as if the entire assembly united in one deafening shout that shook the building. Many were overcome with joy, and hundreds pressed forward to grasp the defendant's hand.

But none was quite so happy as the mother, who stood weeping within the bar.

The Murder of Joseph White

ON the morning of April 7, 1830, Joseph White, an aged and respected citizen of Salem, Mass., was found murdered in his bed. His body had received thirteen stabs, and the skull was fractured from a blow on the temple. Not the slightest motive for the commission of the crime could be conjectured, and there was for many days no clew as to the perpetrator. A public meeting was held by the citizens, and a Committee of Vigilance, consisting of twenty-seven members, was appointed to ferret out, if possible, the offending parties.

A letter soon after fell into the hands of the committee, written by a man named Palmer, of Belfast, Me., which the committee believed contained a clew that would lead to important disclosures. A messenger was at once dispatched to see Palmer. Palmer stated that he knew nothing of the actual facts of the killing, but that, a few days before it took place, he heard George Crowninshield tell Richard Crowninshield, Jr., that Frank Knapp wished them to kill Mr. White and that Joseph J. Knapp, Jr., would pay a thousand dollars to the party who would do the killing;

The Murder of Joseph White

that various modes of executing it were proposed and Palmer was asked to be a party, which he declined; that George stated the object of Joseph J. Knapp, Jr., was to destroy Mr. White's will and then to take his life.

Under the will, Stephen White, a nephew of Joseph White, was the principal legatee. Joseph J. Knapp, Jr., was related by marriage to Joseph White and had been told that if Mr. White should die intestate, his mother-in-law would inherit a considerable portion of the White estate.

Palmer, Joseph J. Knapp, Jr., John Francis Knapp and Richard Crowninshield were all arrested and placed in jail.

When Palmer was brought to jail he was placed directly under the cell in which Crowninshield was kept. Several persons immediately went into his cell to talk with him. While there, they heard a whistle above, looked up and saw that Crowninshield had picked away the mortar from the crevice between the blocks of the granite floor of his cell. After the whistle he cried, "Palmer! Palmer!" and let down a pencil and a slip of paper tied to a string. On the slip of paper were written two lines of poetry, and Palmer was requested, that, if really there, to make it known by completing the verse. It is said that Palmer shrank into a corner and was soon transferred to another cell, and that he seemed to always stand in awe of Crowninshield.

Classics of the Bar

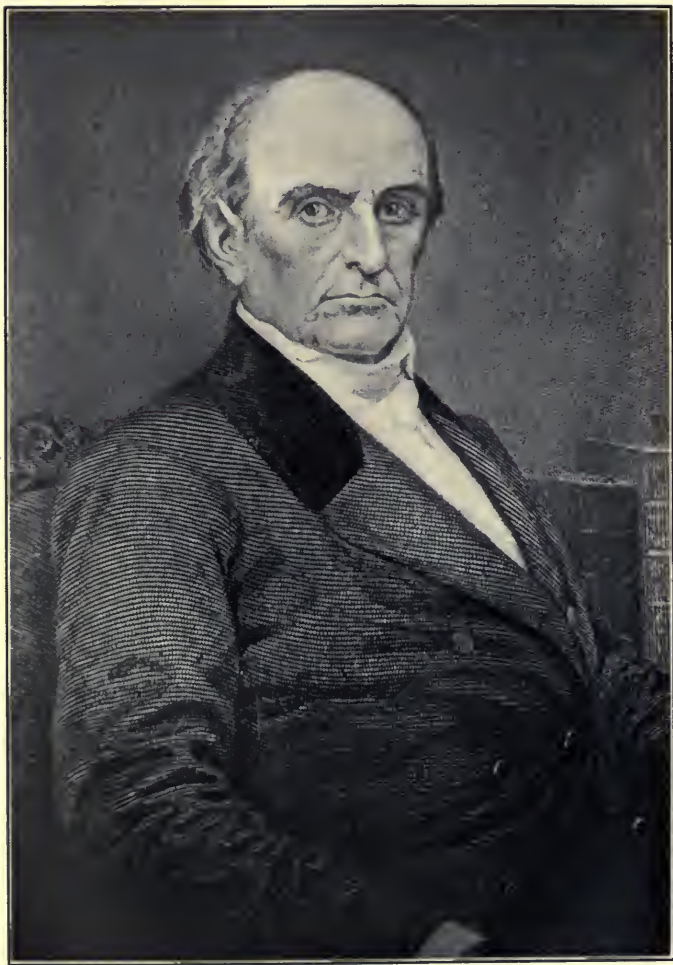
On the third day of his imprisonment, Joseph J. Knapp, Jr., confessed that he projected the murder, that he got his brother to employ Richard Crowninshield, Jr., as the assassin, and that Crowninshield was to do the deed for one thousand dollars. He, himself, he said, had previously stolen the will and destroyed it.

Before the day for the trial came on Richard Crowninshield committed suicide in his cell by hanging himself with his handkerchief.

A special session of court was held at Salem on the 20th of July, and indictments for murder were returned against John Francis Knapp as principal, and Joseph J. Knapp, Jr., and George Crowninshield as accessories.

John Francis Knapp as principal was the first to be placed on trial. Under the law, as it then stood, an accessory could not be tried until the principal had been convicted. It was imperative, therefore, that some one be convicted as principal before Joseph J. Knapp, Jr., the real instigator of the crime, yet only an accessory before the fact, could be tried. And, as Richard Crowninshield, the actual perpetrator, had committed suicide, it will be readily seen how important it was, viewed from the standpoint of the prosecution, that John Francis Knapp should be convicted as principal.

Messrs. Franklin Dexter and William H. Gardiner



DANIEL WEBSTER

Mr. Webster's Address to the Jury

represented the defendant. The famous Daniel Webster appeared on the side of the government. Perhaps it is not necessary to state that his address to the jury was the most interesting feature to the public of the entire month's proceedings.

Mr. Webster's Address to the Jury

I AM little accustomed, gentlemen, to the part which I am now attempting to perform. Hardly more than once or twice has it happened to me to be concerned on the side of the government in any criminal prosecution whatever, and never, until the present occasion, in any case affecting life. But I very much regret that it should have been thought necessary to suggest to you that I am brought here to "hurry you against the law and beyond the evidence." I hope I have too much regard for justice, and too much respect for my own character, to attempt either; and were I to make such attempt, I am sure that in this court nothing can be carried against the law, and that gentlemen intelligent and just as you are, are not, by any power, to be hurried beyond the evidence. Though I could well have wished to shun this occasion, I have not felt at liberty to withhold my professional assistance, when it is supposed that I may be in some degree useful in investigating and discovering the truth respecting this most extraordinary murder. It has seemed to be a duty incumbent on me, as on every

Classics of the Bar

other citizen, to do my best and my utmost to bring to light the perpetrators of this crime. Against the prisoner at the bar, as an individual, I cannot have the slightest prejudice. I would not do him the smallest injury or injustice. But I do not affect to be indifferent to the discovery and the punishment of this deep guilt. I cheerfully share in the opprobrium, how great soever it may be, which is cast on those who feel and manifest an anxious concern that all who had a part in planning, or a hand in executing, this deed of midnight assassination, may be brought to answer for their enormous crime at the bar of public justice.

Gentlemen, it is a most extraordinary case. In some respects it has hardly a precedent anywhere; certainly none in our New England history. This bloody drama exhibited no suddenly excited, ungovernable rage. The actors in it were not surprised by any lionlike temptation springing upon their virtue and overcoming it before resistance could begin. Nor did they do the deed to glut savage vengeance, or satiate long-settled and deadly hate. It was a cool, calculating, money-making murder. It was all "hire and salary, not revenge." It was the weighing of money against life; the counting out of so many pieces of silver against so many ounces of blood.

An aged man, without an enemy in the world, in his own house, and in his own bed, is made the victim of a butcherly murder for mere pay. Truly, here is a new lesson for painters and poets. Whosoever shall hereafter draw the portrait of murder, if he will show

Mr. Webster's Address to the Jury

it as it has been exhibited where such example was last to have been looked for—in the very bosom of our New England society—let him not give it the grim visage of Moloch, the brow knitted by revenge, the face black with settled hate, and the bloodshot eye emitting livid fires of malice. Let him draw, rather, a decorous, smooth-faced, bloodless demon; a picture in repose, rather than in action; not so much an example of human nature in its depravity, and in its paroxysms of crime, as an infernal being, a fiend, in the ordinary display and development of his character.

The deed was executed with a degree of self-possession and steadiness equal to the wickedness with which it was planned. The circumstances now clearly in evidence spread out the whole scene before us. Deep sleep had fallen on the destined victim, and on all beneath his roof. A healthful old man, to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoccupied apartment. With noiseless foot he paces the lonely hall, half lighted by the moon. He winds up the ascent of the stairs, and reaches the door of the chamber. Of this he moves the lock, by soft and continued pressure, till it turns on its hinges without noise, and he enters, and beholds his victim before him. The room is uncommonly open to the admission of light. The face of the innocent sleeper is turned from the murderer, and the beams of the moon, resting

on the gray locks of his aged temple, show him where to strike. The fatal blow is given, and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work; and he plies the dagger, though it is obvious that life has been destroyed by the blow of the bludgeon. He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poniard! To finish the picture, he explores the wrist for the pulse! He feels for it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it as he came in, and escapes. He has done the murder. No eye has seen him; no ear has heard him. The secret is his own, and it is safe! Ah, gentlemen, that was a dreadful mistake! Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner where the guilty can bestow it and say it is safe. Not to speak of the eye which pierces through all disguises, and beholds everything as in the splendor of noon, such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that "murder will out." True it is that Providence hath so ordained, and doth so govern things, that those who break the great law of Heaven by shedding man's blood seldom succeed in avoiding discovery. Especially in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once

Mr. Webster's Address to the Jury

to explore every man, every thing, every circumstance connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery. Meantime the guilty soul cannot keep its own secret. It is false to itself, or, rather, it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him, and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstance to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed; there is no refuge from confession but suicide, and suicide is confession.

Classics of the Bar

Much has been said on this occasion of the excitement which has existed and still exists, and of the extraordinary measures taken to discover and punish the guilty. No doubt there has been, and is, much excitement, and strange, indeed, it would be had it been otherwise. Should not all the peaceable and well-disposed naturally feel concerned, and naturally exert themselves to bring to punishment the authors of this secret assassination? Was it a thing to be slept upon or forgotten? Did you, gentlemen, sleep quite as quietly in your beds after this murder as before? Was it not a case for rewards, for meetings, for committees, for the united efforts of all the good to find out a band of murderous conspirators, of midnight ruffians, and to bring them to the bar of justice and law? If this be excitement, is it an unnatural or an improper excitement?

It seems to me, gentlemen, that there are appearances of another feeling, of a very different nature and character, not very extensive, I would hope, but still there is too much evidence of its existence. Such is human nature that some persons lose their abhorrence of crime in their admiration of its magnificent exhibitions. Ordinary vice is reprobated by them; but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime seize on the imagination, and lead them to forget the depths of the guilt in admiration of the excellence of the performance, or the unequaled atrocity of the purpose. There are those in our day who have made great use of this in-

Mr. Webster's Address to the Jury

firmity of our nature, and by means of it done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles, of the young, the heedless, and the imaginative, by the exhibition of interesting and beautiful monsters. They render depravity attractive, sometimes by the polish of its manners, and sometimes by its very extravagance, and study to show off crime under all the advantages of cleverness and dexterity. Gentlemen, this is an extraordinary murder, but it is still a murder. We are not to lose ourselves in wonder at its origin, or in gazing on its cool and skillful execution. We are to detect and to punish it; and while we proceed with caution against the prisoner, and are to be sure that we do not visit on his head the offenses of others, we are yet to consider that we are dealing with a case of most atrocious crime, which has not the slightest circumstance about it to soften its enormity. It is murder; deliberate, concerted, malicious murder. Although the interest of this case may have diminished by the repeated investigation of the facts, still the additional labor which it imposes upon all concerned is not to be regretted if it should result in removing all doubts of the guilt of the prisoner.

The learned counsel for the prisoner has said truly that it is your individual duty to judge the prisoner; that it is your individual duty to determine his guilt or innocence; and that you are to weigh the testimony with candor and fairness. But much, at the same time, has been said which, although it would seem to

Classics of the Bar

have no distinct bearing on the trial, cannot be passed over without some notice. A tone of complaint so peculiar has been indulged as would almost lead us to doubt whether the prisoner at the bar or the managers of this prosecution are now on trial. Great pains have been taken to complain of the manner of the prosecution. We hear of getting up a case; of setting in motion trains of machinery; of foul testimony; of combinations to overwhelm the prisoner; of private prosecutors; that the prisoner is hunted, persecuted, driven to his trial; that everybody is against him, and various other complaints, as if those who would bring to punishment the authors of this murder were almost as bad as they who committed it. In the course of my whole life, I have never heard before so much said about the particular counsel who happen to be employed; as if it were extraordinary that other counsel than the usual officers of the government should assist in the management of a case on the part of the government. In one of the last criminal trials in this county, that of Jackman for the "Goodridge robbery" (so called), I remember that the learned head of the Suffolk bar, Mr. Prescott, came down in aid of the officers of the government. This was regarded as neither strange nor improper. The counsel for the prisoner in that case contented themselves with answering his arguments, as far as they were able, instead of carping at his presence.

Complaint is made that rewards were offered in

Mr. Webster's Address to the Jury

this case, and temptations held out, to obtain testimony. Are not rewards always offered when great and secret offenses are committed? Rewards were offered in the case to which I have alluded, and every other means taken to discover the offenders that ingenuity or the most persevering vigilance could suggest. The learned counsel have suffered their zeal to lead them into a strain of complaint at the manner in which the perpetrators of this crime were detected, almost indicating that they regard it as a positive injury to them to have found out their guilt. Since no man witnessed it, since they do not now confess it, attempts to discover it are half esteemed as officious intermeddling and impertinent inquiry. It is said that here even a committee of vigilance was appointed. This is a subject of reiterated remark. This committee are pointed at as though they had been officiously intermeddling with the administration of justice. They are said to have been "laboring for months" against the prisoner. Gentlemen, what must we do in such a case? Are people to be dumb and still through fear of overdoing? Is it come to this: that an effort cannot be made, a hand cannot be lifted, to discover the guilty, without its being said there is a combination to overwhelm innocence? Has the community lost all moral sense? Certainly, a community that would not be roused to action upon an occasion such as this was—a community which should not deny sleep to their eyes, and slumber to their eyelids, till they had exhausted all

the means of discovery and detection—must indeed be lost to all moral sense, and would scarcely deserve protection from the laws. The learned counsel have endeavored to persuade you that there exists a prejudice against the persons accused of this murder. They would have you understand that it is not confined to this vicinity alone, but that even the legislature have caught this spirit; that, through the procurement of the gentleman here styled “private prosecutor,” who is a member of the senate, a special session of this court was appointed for the trial of these offenders; that the ordinary movements of the wheels of justice were too slow for the purposes devised. But does not everybody see and know that it was matter of absolute necessity to have a special session of the court? When or how could the prisoners have been tried without a special session? In the ordinary arrangement of the courts, but one week in a year is allotted for the whole court to sit in this county. In the trial of all capital offenses, a majority of the court, at least, is required to be present. In the trial of the present case alone, three weeks have already been taken up. Without such special session, then, three years would not have been sufficient for the purpose. It is answer sufficient to all complaints on this subject to say that the law was drawn by the late chief justice himself, to enable the court to accomplish its duties, and to afford the persons accused an opportunity for trial without delay.

Again, it is said that it was not thought of making

Mr. Webster's Address to the Jury

Francis Knapp, the prisoner at the bar, a principal till after the death of Richard Crowninshield, Jr.; that the present indictment is an afterthought; that "testimony was got up" for the occasion. It is not so. There is no authority for this suggestion. The case of the Knapps had not then been before the grand jury. The officers of the government did not know what the testimony would be against them. They could not, therefore, have determined what course they should pursue. They intended to arraign all as principals who should appear to have been principals, and all as accessories who should appear to have been accessories. All this could be known only when the evidence should be produced.

But the learned counsel for the defendant take a somewhat loftier flight still. They are more concerned, they assure us, for the law itself than even for their client. Your decision in this case, they say, will stand as a precedent. Gentlemen, we hope it will. We hope it will be a precedent both of candor and intelligence, of fairness and of firmness; a precedent of good sense and honest purpose pursuing their investigation discreetly, rejecting loose generalities, exploring all the circumstances, weighing each, in search of truth, and embracing and declaring the truth when found. It is said that "laws are made, not for the punishment of the guilty, but for the protection of the innocent." This is not quite accurate, perhaps, but, if so, we hope they will be so administered as to give that protection. But who are the

Classics of the Bar

innocent whom the law would protect? Gentlemen, Joseph White was innocent. They are innocent who, having lived in the fear of God through the day, wish to sleep in His peace through the night, in their own beds. The law is established that those who live quietly may sleep quietly; that they who do no harm may feel none. The gentlemen can think of none that are innocent except the prisoner at the bar, not yet convicted. Is a proved conspirator to murder innocent? Are the Crowninshields and the Knapps innocent? What is innocence? How deep stained with blood, how reckless in crime, how deep in depravity may it be, and yet retain innocence? The law is made, if we would speak with entire accuracy, to protect the innocent by punishing the guilty. But there are those innocent out of a court, as well as in; innocent citizens not suspected of crime, as well as innocent prisoners at the bar.

The criminal law is not founded on a principle of vengeance. It does not punish that it may inflict suffering. The humanity of the law feels and regrets every pain it causes, every hour of restraint it imposes and, more deeply still, every life it forfeits. But it uses evil as the means of preventing greater evil. It seeks to deter from crime by the example of punishment. This is its true, and only true, main object. It restrains the liberty of the few offenders, that the many who do not offend may enjoy their liberty. It takes the life of the murderer, that other murders may not be committed. The law might open the jails,

Mr. Webster's Address to the Jury

and at once set free all persons accused of offenses, and it ought to do so if it could be made certain that no other offenses would hereafter be committed; because it punishes, not to satisfy any desire to inflict pain, but simply to prevent the repetition of crimes. When the guilty, therefore, are not punished, the law has so far failed of its purpose; the safety of the innocent is so far endangered. Every unpunished murder takes away something from the security of every man's life. Whenever a jury, through whimsical and ill-founded scruples, suffer the guilty to escape, they make themselves answerable for the augmented danger of the innocent.

We wish nothing to be strained against this defendant. Why, then, all this alarm? Why all this complaint against the manner in which the crime is discovered? The prisoner's counsel catch at supposed flaws of evidence, or bad character of witnesses, without meeting the case. Do they mean to deny the conspiracy? Do they mean to deny that the two Crowninshields and the two Knapps were conspirators? Why do they rail against Palmer, while they do not disprove, and hardly dispute, the truth of any one fact sworn to by him? Instead of this, it is made matter of sentimentality that Palmer has been prevailed upon to betray his bosom companions, and to violate the sanctity of friendship. Again I ask, why do they not meet the case? If the fact is out, why not meet it? Do they mean to deny that Captain White is dead? One would have almost supposed

even that, from some remarks that have been made. Do they mean to deny the conspiracy? Or, admitting a conspiracy, do they mean to deny only that Frank Knapp, the prisoner at the bar, was abetting in the murder, being present, and so deny that he was a principal? If a conspiracy is proved, it bears closely upon every subsequent subject of inquiry. Why do they not come to the fact? Here the defense is wholly indistinct. The counsel neither take the ground nor abandon it. They neither fly nor light—they hover. But they must come to a closer mode of contest. They must meet the facts, and either deny or admit them. Had the prisoner at the bar, then, a knowledge of this conspiracy or not? This is the question. Instead of laying out our strength in complaining of the manner in which the deed is discovered, of the extraordinary pains taken to bring the prisoner's guilt to light, would it not be better to show there was no guilt? Would it not be better to show his innocence? They say, and they complain, that the community feel a great desire that he should be punished for his crimes. Would it not be better to convince you that he has committed no crime?

Gentlemen, let us now come to the case. Your first inquiry on the evidence will be, Was Captain White murdered in pursuance of a conspiracy, and was the defendant one of this conspiracy? If so, the second inquiry is, Was he so connected with the murder itself as that he is liable to be convicted as a principal? The defendant is indicted as a principal. If

Mr. Webster's Address to the Jury

not guilty as such, you cannot convict him. The indictment contains three distinct classes of counts. In the first, he is charged as having done the deed with his own hand; in the second, as an aider and abettor to Richard Crowninshield, Jr., who did the deed; in the third, as an aider and abettor to some person unknown. If you believe him guilty on either of these counts, or in either of these ways, you must convict him. It may be proper to say, as a preliminary remark, that there are two extraordinary circumstances attending this trial. One is that Richard Crowninshield, Jr., the supposed immediate perpetrator of the murder, since his arrest, has committed suicide. He has gone to answer before a tribunal of perfect infallibility. The other is that Joseph Knapp, the supposed originator and planner of the murder, having once made a full disclosure of the facts under a promise of indemnity, is, nevertheless, not now a witness. Notwithstanding his disclosure and his promise of indemnity, he now refuses to testify. He chooses to return to his original state, and now stands answerable himself when the time shall come for his trial. These circumstances it is fit you should remember in your investigation of the case. Your decision may affect more than the life of this defendant. If he be not convicted as principal, no one can be. Nor can any one be convicted of a participation in the crime as accessory. The Knapps and George Crowninshield will be again on the community. This shows the importance of the duty you have to perform, and serves

to remind you of the care and wisdom necessary to be exercised in its performance. But certainly these considerations do not render the prisoner's guilt any clearer, nor enhance the weight of the evidence against him. No one desires you to regard consequences in that light. No one wishes anything to be strained or too far pressed against the prisoner. Still, it is fit you should see the full importance of the duty which devolves upon you.

And now, gentlemen, in examining this evidence, let us begin at the beginning, and see, first, what we know independent of the disputed testimony. This is a case of circumstantial evidence; and these circumstances, we think, are full and satisfactory. The case mainly depends upon them, and it is common that offenses of this kind must be proved in this way. Midnight assassins take no witnesses. The evidence of the facts relied on has been somewhat sneeringly denominated by the learned counsel "circumstantial stuff," but it is not such stuff as dreams are made of. Why does he not rend this stuff? Why does he not scatter it to the winds? He dismisses it a little too summarily. It shall be my business to examine this stuff, and try its cohesion. The letter from Palmer at Belfast, is that no more than flimsy stuff? The fabricated letters from Knapp to the committee and to Mr. White, are they nothing but stuff? The circumstance that the housekeeper was away at the time the murder was committed, as it was agreed she should be, is that, too, a useless piece of the same stuff? The

Mr. Webster's Address to the Jury

facts that the key of the chamber door was taken out and secreted, that the window was unbarred and unbolted, are these to be so slightly and so easily disposed of ?

It is necessary, gentlemen, to settle now, at the commencement, the great question of a conspiracy. If there was none, or the defendant was not a party, then there is no evidence here to convict him. If there was a conspiracy, and he is proved to have been a party, then these two facts have a strong bearing on others, and all the great points of inquiry. The defendant's counsel take no distinct ground, as I have already said, on this point, either to admit or to deny. They choose to confine themselves to a hypothetical mode of speech. They say, supposing there was a conspiracy, *non sequitur* that the prisoner is guilty as principal. Be it so. But still, if there was a conspiracy, and if he was a conspirator, and helped to plan the murder, this may shed much light on the evidence which goes to charge him with the execution of that plan. We mean to make out the conspiracy, and that the defendant was a party to it, and then to draw all just inferences from these facts. Let me ask your attention, then, in the first place, to those appearances, on the morning after the murder, which have a tendency to show that it was done in pursuance of a preconcerted plan of operation. What are they? A man was found murdered in his bed. No stranger had done the deed; no one unacquainted with the house had done it. It was apparent that some-

body within had opened, and that somebody without had entered. There had obviously and certainly been concert and coöperation. The inmates of the house were not alarmed when the murder was perpetrated. The assassin had entered without any riot or any violence. He had found the way prepared before him. The house had been previously opened. The window was unbarred from within, and its fastening unscrewed. There was a lock on the door of the chamber in which Mr. White slept, but the key was gone. It had been taken away and secreted. The footsteps of the murderer were visible, outdoors, tending towards the window. The plank by which he entered the window still remained. The road he pursued had been thus prepared for him. The victim was slain, and the murderer had escaped. Everything indicated that somebody within had coöperated with somebody without. Everything proclaimed that some of the inmates, or somebody having access to the house, had had a hand in the murder. On the face of the circumstances, it was apparent, therefore, that this was a premeditated, concerted murder; that there had been a conspiracy to commit it. Who, then, were the conspirators? If not now found out, we are still groping in the dark, and the whole tragedy is still a mystery. If the Knapps and the Crowninshields were not the conspirators in this murder, then there is a whole set of conspirators not yet discovered. Because, independent of the testimony of Palmer and Leighton, independent of all disputed evidence, we

Mr. Webster's Address to the Jury

know, from uncontroverted facts, that this murder was, and must have been, the result of concert and co-operation between two or more. We know it was not done without plan and deliberation. We see that whoever entered the house to strike the blow was favored and aided by some one who had been previously in the house, without suspicion, and who had prepared the way. This is concert; this is coöperation; this is conspiracy. If the Knapps and the Crowninshields, then, were not the conspirators, who were? Joseph Knapp had a motive to desire the death of Mr. White, and that motive has been shown. He was connected by marriage with the family of Mr. White. His wife was the daughter of Mrs. Beckford, who was the only child of a sister of the deceased. The deceased was more than eighty years old, and had no children. His only heirs were nephews and nieces. He was supposed to be possessed of a very large fortune, which would have descended, by law, to his several nephews and nieces in equal shares, or, if there was a will, then according to the will; but as he had but two branches of heirs—the children of his brother, Henry White, and of Mrs. Beckford—each of these branches, according to the common idea, would have shared one-half of his property. This popular idea is not legally correct; but it is common, and very probably was entertained by the parties. According to this idea, Mrs. Beckford, on Mr. White's death without a will, would have been entitled to one-half of his ample fortune, and Joseph

Knapp had married one of her three children. There was a will, and this will gave the bulk of the property to others; and we learn from Palmer that one part of the design was to destroy the will before the murder was committed. There had been a previous will, and that previous will was known or believed to have been more favorable than the other to the Beckford family; so that, by destroying the last will, and destroying the life of the testator at the same time, either the first and more favorable will would be set up or the deceased would have no will, which would be, as was supposed, still more favorable. But the conspirators not having succeeded in obtaining and destroying the last will, though they accomplished the murder, that will being found in existence and safe, and that will bequeathing the mass of the property to others, it seemed at the time impossible for Joseph Knapp, as for any one else, indeed, but the principal devisee, to have any motive which should lead to the murder. The key which unlocks the whole mystery is the knowledge of the intention of the conspirators to steal the will. This is derived from Palmer, and it explains all. It solves the whole marvel. It shows the motive which actuated those against whom there is much evidence, but who, without the knowledge of this intention, were not seen to have had a motive. This intention is proved, as I have said, by Palmer; and it is so congruous with all the rest of the case—it agrees so well with all facts and circumstances—that no man could well withhold his belief, though the

Mr. Webster's Address to the Jury

facts were stated by a still less credible witness. If one, desirous of opening a lock, turns over and tries a bunch of keys till he finds one that will open it, he naturally supposes he has found the key of that lock. So, in explaining circumstances of evidence which are apparently irreconcilable or unaccountable, if a fact be suggested which at once accounts for all, and reconciles all, by whomsoever it may be stated, it is still difficult not to believe that such fact is the true fact belonging to the case. In this respect, Palmer's testimony is singularly confirmed. If it were false, his ingenuity could not furnish us such clear exposition of strange appearing circumstances. Some truth not before known can alone do that.

When we look back, then, to the state of things immediately on the discovery of the murder, we see that suspicion would naturally turn at once, not to the heirs at law, but to those principally benefited by the will. They, and they alone, would be supposed or seem to have a direct object for wishing Mr. White's life to be terminated. And, strange as it may seem, we find counsel now insisting that, if no apology, it is yet mitigation of the atrocity of the Knapps' conduct in attempting to charge this foul murder on Mr. White, the nephew and principal devisee, that public suspicion was already so directed! As if assassination of character were excusable in proportion as circumstances may render it easy! Their endeavors, when they knew they were suspected themselves, to fix the charge on others, by foul means and by falsehood,

are fair and strong proof of their own guilt. But more of that hereafter.

The counsel say that they might safely admit that Richard Crowninshield, Jr., was the perpetrator of this murder. But how could they safely admit that? If that were admitted, everything else would follow. For why should Richard Crowninshield, Jr., kill Mr. White? He was not his heir nor his devisee; nor was he his enemy. What could be his motive? If Richard Crowninshield, Jr., killed Mr. White, he did it at some one's procurement, who himself had a motive; and who, having any motive, is shown to have had any intercourse with Richard Crowninshield, Jr., but Joseph Knapp, and this principally through the agency of the prisoner at the bar? It is the infirmity, the distressing difficulty, of the prisoner's case, that his counsel cannot and dare not admit what they yet cannot disprove, and what all must believe. He who believes, on this evidence, that Richard Crowninshield, Jr., was the immediate murderer, cannot doubt that both the Knapps were conspirators in that murder. The counsel, therefore, are wrong, I think, in saying they might safely admit this. The admission of so important and so connected a fact would render it impossible to contend further against the proof of the entire conspiracy, as we state it. What, then, was this conspiracy? J. J. Knapp, Jr., desirous of destroying the will, and of taking the life of the deceased, hired a ruffian, who, with the aid of other ruffians, was to enter the house, and murder him in

Mr. Webster's Address to the Jury

his bed. As far back as January this conspiracy began. Endicott testifies to a conversation with J. J. Knapp at that time, in which Knapp told him that Captain White had made a will, and given the principal part of his property to Stephen White. When asked how he knew, he said: "Black and white don't lie." When asked if the will was not locked up, he said: "There is such a thing as two keys to the same lock." And, speaking of the then late illness of Captain White, he said that Stephen White would not have been sent for if he had been there. Hence it appears that, as early as January, Knapp had a knowledge of the will, and that he had access to it by means of false keys. This knowledge of the will, and an intent to destroy it, appear also from Palmer's testimony,—a fact disclosed to him by the other conspirators. He says that he was informed of this by the Crowninshields on the 2d of April. But then it is said that Palmer is not to be credited; that, by his own confession, he is a felon; that he has been in the state prison in Maine; and, above all, that he was intimately associated with these conspirators themselves. Let us admit these facts; let us admit him to be as bad as they would represent him to be; still, in law, he is a competent witness. How else are the secret designs of the wicked to be proved but by their wicked companions to whom they have disclosed them? The government does not select its witnesses. The conspirators themselves have chosen Palmer. He was the confidant of the prisoners. The fact, how-

ever, does not depend on his testimony alone. It is corroborated by other proof, and, taken in connection with the other circumstances, it has strong probability. In regard to the testimony of Palmer, generally, it may be said that it is less contradicted, in all parts of it, either by himself or others, than that of any other material witness, and that everything he has told is corroborated by other evidence, so far as it is susceptible of confirmation. An attempt has been made to impair his testimony as to his being at the Halfway House on the night of the murder; you have seen with what success. Mr. Babb is called to contradict him. You have seen how little he knows, and even that not certainly; for he himself is proved to have been in an error by supposing Palmer to have been at the Halfway House on the evening of the 9th of April. At that time he is proved to have been at Dustin's, in Danvers. If, then, Palmer, bad as he is, has disclosed the secrets of the conspiracy, and has told the truth, there is no reason why it should not be believed. Truth is truth, come whence it may.

The facts show that this murder had been long in agitation; that it was not a new proposition on the 2d of April; that it had been contemplated for five or six weeks. Richard Crowninshield was at Wenham in the latter part of March, as testified by Starrett. Frank Knapp was at Danvers in the latter part of February, as testified by Allen. Richard Crowninshield inquired whether Captain Knapp was about home when at Wenham. The probability is that

Mr. Webster's Address to the Jury

they would open the case to Palmer as a new project. There are other circumstances that show it to have been some weeks in agitation. Palmer's testimony as to the transaction on the 2d of April is corroborated by Allen, and by Osborn's books. He says that Frank Knapp came there in the afternoon, and again in the evening. So the book shows. He says that Captain White had gone out to his farm on that day. So others prove. How could this fact, or these facts, have been known to Palmer, unless Frank Knapp had brought the knowledge? And was it not the special object of this visit to give information of this fact, that they might meet him and execute their purpose on his return from his farm? The letter of Palmer written at Belfast, bears intrinsic marks of genuineness. It was mailed at Belfast, May 13th. It states facts that he could not have known unless his testimony be true. This letter was not an afterthought; it is a genuine narrative. In fact, it says: "I know the business your brother Frank was transacting on the 2d of April." How could he have possibly known this unless he had been there? The "one thousand dollars that was to be paid"—where could he have obtained this knowledge? The testimony of Endicott, of Palmer, and these facts are to be taken together; and they most clearly show that the death of Captain White was caused by somebody interested in putting an end to his life.

As to the testimony of Leighton, as far as manner of testifying goes, he is a bad witness; but it does not

follow from this that he is not to be believed. There are some strange things about him. It is strange that he should make up a story against Captain Knapp, the person with whom he lived; that he never voluntarily told anything—all that he has said was screwed out of him. But the story could not have been invented by him; his character for truth is unimpeached; and he intimated to another witness, soon after the murder happened, that he knew something he should not tell. There is not the least contradiction in his testimony, though he gives a poor account of withholding it. He says that he was extremely bothered by those who questioned him. In the main story he relates he is entirely consistent with himself. Some things are for him, and some against him. Examine the intrinsic probability of what he says. See if some allowance is not to be made for him on account of his ignorance of things of this kind. It is said to be extraordinary that he should have heard just so much of the conversation, and no more; that he should have heard just what was necessary to be proved, and nothing else. Admit that this is extraordinary; still, this does not prove it untrue. It is extraordinary that you twelve gentlemen should be called upon, out of all the men in the county, to decide this case. No one could have foretold this three weeks since. It is extraordinary that the first clew to this conspiracy should have been derived from information given by the father of the prisoner at the bar. And in every case that comes to trial there are many things extraor-

Mr. Webster's Address to the Jury

dinary. The murder itself is a most extraordinary one; but still we do not doubt its reality.

It is argued that this conversation between Joseph and Frank could not have been as Leighton has testified, because they had been together for several hours before; this subject must have been uppermost in their minds, whereas this appears to have been the commencement of their conversation upon it. Now this depends altogether upon the tone and manner of the expression; upon the particular word in the sentence which was emphatically spoken. If he had said, "When did you *see* Dick, Frank?" this would not seem to be the beginning of the conversation. With what emphasis it was uttered it is not possible to learn, and therefore nothing can be made of this argument. If this boy's testimony stood alone, it should be received with caution. And the same may be said of the testimony of Palmer. But they do not stand alone. They furnish a clew to numerous other circumstances, which, when known, mutually confirm what would have been received with caution without such corroboration. How could Leighton have made up this conversation? "When did you see Dick? I saw him this morning. When is he going to kill the old man? I don't know. Tell him, if he don't do it soon, I won't pay him." Here is a vast amount in a few words. Had he wit enough to invent this? There is nothing so powerful as truth, and often nothing so strange. It is not even suggested that the story was made for him. There is nothing so extraordinary in

the whole matter as it would have been for this ignorant country boy to invent this story.

The acts of the parties themselves furnish strong presumption of their guilt. What was done on the receipt of the letter from Maine? This letter was signed by Charles Grant, Jr., a person not known to either of the Knapps, nor was it known to them that any other person besides the Crowninshields knew of the conspiracy. This letter, by the accidental omission of the word "Jr.," fell into the hands of the father, when intended for the son. The father carried it to Wenham, where both the sons were. They both read it. Fix your eye steadily on this part of the "circumstantial stuff" which is in the case, and see what can be made of it. This was shown to the two brothers on Saturday, the 15th of May. Neither of them knew Palmer, and, if they had known him, they could not have known him to have been the writer of this letter. It was mysterious to them how any one at Belfast could have had knowledge of this affair. Their conscious guilt prevented due circumspection. They did not see the bearing of its publication. They advised their father to carry it to the committee of vigilance, and it was so carried. On the Sunday following, Joseph began to think that there might be something in it. Perhaps, in the meantime, he had seen one of the Crowninshields. He was apprehensive that they might be suspected. He was anxious to turn attention from their family. What course did he adopt to effect this? He addressed one letter,

Mr. Webster's Address to the Jury

with a false name, to Mr. White, and another to the committee, and, to complete the climax of his folly, he signed the letter addressed to the committee, "Grant," the same name as that which was signed to the letter received from Belfast. It was in the knowledge of the committee that no person but the Knapps had seen this letter from Belfast, and that no other person knew its signature. It, therefore, must have been irresistibly plain to them that one of the Knapps was the writer of the letter received by the committee, charging the murder on Mr. White. Add to this the fact of its having been dated at Lynn, and mailed at Salem four days after it was dated, and who could doubt respecting it? Have you ever read or known of folly equal to this? Can you conceive of crime more odious and abominable? Merely to explain the apparent mysteries of the letter from Palmer, they excite the basest suspicions against a man whom, if they were innocent, they had no reason to believe guilty, and whom, if they were guilty, they most certainly knew to be innocent. Could they have adopted a more direct method of exposing their own infamy? The letter to the committee has intrinsic marks of a knowledge of this transaction. It tells the time and the manner in which the murder was committed. Every line speaks the writer's condemnation. In attempting to divert attention from his family, and to charge the guilt upon another, he indelibly fixes it upon himself. Joseph Knapp requested Allen to put these letters into the post office, because, said he,

"I wish to nip this silly affair in the bud." If this was not the order of an overruling Providence, I should say that it was the silliest piece of folly that was ever practiced. Mark the destiny of crime. It is ever obliged to resort to subterfuges; it trembles in the broad light; it betrays itself in seeking concealment. He alone walks safely, who walks uprightly. Who for a moment can read these letters and doubt of Joseph Knapp's guilt?

The constitution of nature is made to inform against him. There is no corner dark enough to conceal him. There is no turnpike road broad enough or smooth enough for a man so guilty to walk in without stumbling. Every step proclaims his secret to every passenger. His own acts come out to fix his guilt. In attempting to charge another with his own crime, he writes his own confession. To do away with the effect of Palmer's letter, signed "Grant," he writes a letter himself, and affixes to it the name of Grant. He writes in a disguised hand. But how could it happen that the same Grant should be in Salem that was at Belfast? This has brought the whole thing out. Evidently he did it, because he has adopted the same style. Evidently he did it, because he speaks of the price of blood, and of other circumstances connected with the murder, that no one but a conspirator could have known.

Palmer says he made a visit to the Crowninshields on the 9th of April. George then asked him whether he had heard of the murder. Richard inquired

Mr. Webster's Address to the Jury

whether he had heard the music at Salem. They said that they were suspected, that a committee had been appointed to search the houses, and that they had melted up the dagger the day after the murder, because it would be a suspicious circumstance to have it found in their possession. Now, this committee was not appointed, in fact, until Friday evening. But this proves nothing against Palmer; it does not prove that George did not tell him so; it only proves that he gave a false reason for a fact. They had heard that they were suspected. How could they have heard this unless it were from the whisperings of their own consciences? Surely this rumor was not then public.

About the 27th of April, another attempt was made by the Knapps to give a direction to public suspicion. They reported themselves to have been robbed, in passing from Salem to Wenham, near Wenham pond. They came to Salem and stated the particulars of the adventures. They described persons, their dress, size and appearance, who had been suspected of the murder. They would have it understood that the community was infested by a band of ruffians, and that they themselves were the particular objects of their vengeance. Now, this turns out to be all fictitious, all false. Can you conceive of anything more enormous—any wickedness greater—than the circulation of such reports? than the allegation of crimes, if committed, capital? If no such crime had been committed, then it reacts with double force upon themselves, and goes very far to show their guilt. How did

they conduct themselves on this occasion? Did they make hue and cry? Did they give information that they had been assaulted that night at Wenham? No such thing. They rested quietly that night; they waited to be called on for the particulars of their adventure; they made no attempt to arrest the offenders,—this was not their object. They were content to fill the thousand mouths of rumor, to spread abroad false reports, to divert the attention of the public from themselves; for they thought every man suspected them, because they knew they ought to be suspected.

The manner in which the compensation for this murder was paid is a circumstance worthy of consideration. By examining the facts and dates it will satisfactorily appear that Joseph Knapp paid a sum of money to Richard Crowninshield, in five-franc pieces, on the 24th of April. On the 21st of April, Joseph Knapp received five hundred five-franc pieces as the proceeds of an adventure at sea. The remainder of this species of currency that came home in the vessel was deposited in a bank at Salem. On Saturday, the 24th of April, Frank and Richard rode to Wenham. They were there with Joseph an hour or more, and appeared to be negotiating private business. Richard continued in the chaise. Joseph came to the chaise and conversed with him. These facts are proved by Hart and Leighton, and by Osborn's books. On Saturday evening, about this time, Richard Crowninshield is proved, by Lummus, to have been at Wenham with another person, whose appearance corre-

Mr. Webster's Address to the Jury

sponds with Frank's. Can any one doubt this being the same evening? What had Richard Crowninshield to do at Wenham with Joseph, unless it were this business? He was there before the murder; he was there after the murder; he was there clandestinely, unwilling to be seen. If it were not upon this business, let it be told what it was for. Joseph Knapp could explain it. Frank Knapp might explain it. But they do not explain it, and the inference is against them. Immediately after this, Richard passes five-franc pieces,—on the same evening, one to Lummus, five to Palmer,—and near this time, George passes three or four in Salem. Here are nine of these pieces passed by them in four days. This is extraordinary. It is an unusual currency. In ordinary business, few men would pass nine such pieces in the course of a year. If it were not received in this way, why not explain how they came by them? Money was not so flush in their pockets that they could not tell whence it came, if it honestly came there. It is extremely important to them to explain whence this money came, and they would do it if they could. If, then, the price of blood was paid at this time, in the presence and with the knowledge of this defendant, does not this prove him to have been connected with this conspiracy?

Observe, also, the effect on the mind of Richard of Palmer's being arrested and committed to prison; the various efforts he makes to discover the fact; the lowering, through the crevices of the rock, the pencil

Classics of the Bar

and paper for him to write upon; the sending two lines of poetry, with the request that he would return the corresponding lines; the shrill and peculiar whistle; the inimitable exclamations of "Palmer! Palmer! Palmer!" All these things prove how great was his alarm. They corroborate Palmer's story, and tend to establish the conspiracy.

Joseph Knapp had a part to act in this matter. He must have opened the window, and secreted the key. He had free access to every part of the house; he was accustomed to visit there; he went in and out at his pleasure; he could do this without being suspected. He is proved to have been there the Saturday preceding.

If all these things, taken in connection, do not prove that Captain White was murdered in pursuance of a conspiracy, then the case is at an end.

Savary's testimony is wholly unexpected. He was called for a different purpose. When asked who the person was that he saw come out of Captain White's yard between three and four o'clock in the morning, he answered, Frank Knapp. It is not clear that this is not true. There may be many circumstances of importance connected with this, though we believe the murder to have been committed between ten and eleven o'clock. The letter to Dr. Barstow states it to have been done about eleven o'clock; it states it to have been done with a blow on the head, from a weapon loaded with lead. Here is too great a correspondence with the reality not to have some mean-

Mr. Webster's Address to the Jury

ing in it. Dr. Peirson was always of the opinion that the two classes of wounds were made with different instruments, and by different hands. It is possible that one class was inflicted at one time, and the other at another. It is possible that, on the last visit, the pulse might not have entirely ceased to beat, and then the finishing stroke was given. It is said that, when the body was discovered, some of the wounds wept, while the others did not. They may have been inflicted from mere wantonness. It was known that Captain White was accustomed to keep specie by him in his chamber. This perhaps may explain the last visit. It is proved that this defendant was in the habit of retiring to bed, and leaving it afterwards, without the knowledge of his family. Perhaps he did so on this occasion. We see no reason to doubt the fact; and it does not shake our belief that the murder was committed early in the night. What are the probabilities as to the time of the murder? Mr. White was an aged man. He usually retired to bed at about half-past nine. He slept soundest in the early part of the night; usually awoke in the middle and latter parts; and his habits were perfectly well known. When would persons, with a knowledge of these facts, be most likely to approach him? Most certainly in the first hour of his sleep. This would be the safest time. If seen then going to or from the house, the appearance would be least suspicious. The earlier hour would, then, have been most probably selected.

Gentlemen, I shall dwell no longer on the evidence

which tends to prove that there was a conspiracy, and that the prisoner was a conspirator. All the circumstances concur to make out this point. Not only Palmer swears to it, in effect, and Leighton, but Allen mainly supports Palmer, and Osborn's books lend confirmation, so far as possible from such a source. Palmer is contradicted in nothing, either by any other witness or any proved circumstance or occurrence. Whatever could be expected to support him does support him. All the evidence clearly manifests, I think, that there was a conspiracy; that it originated with Joseph Knapp; that defendant became a party to it, and was one of its conductors, from first to last. One of the most powerful circumstances is Palmer's letter from Belfast. The amount of this is a direct charge on the Knapps of the authorship of this murder. How did they treat this charge,—like honest men, or like guilty men? We have seen how it was treated. Joseph Knapp fabricated letters, charging another person, and caused them to be put into the post office. I shall now proceed on the supposition that it is proved that there was a conspiracy to murder Mr. White, and that the prisoner was party to it.

The second and the material inquiry is, Was the prisoner present at the murder, aiding and abetting therein? This leads to the legal question in the case. What does the law mean when it says that, in order to charge him as a principal, "he must be present, aiding and abetting in the murder"? In the language of the late chief justice: "It is not required that the

Mr. Webster's Address to the Jury

abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator of the victim, to make him a principal. If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, having knowledge of the purpose and object of the assassin, this, in the eye of the law, is being present, aiding and abetting, so as to make him a principal in the murder." "If he be at a distance, co-operating." This is not a distance to be measured by feet or rods. If the intent to lend aid combine with a knowledge that the murder is to be committed, and the person so intending be so situate that he can by any possibility lend this aid in any manner, then he is present in legal contemplation. He need not lend any actual aid,—to be ready to assist is assisting.

There are two sorts of murder. The distinction between them it is of essential importance to bear in mind: (1) Murder in an affray, or upon sudden and unexpected provocation; (2) murder secretly, with a deliberate, predetermined intention to commit the crime. Under the first class, the question usually is whether the offense be murder or manslaughter in the person who commits the deed. Under the second class, it is often a question whether others than he who actually did the deed were present, aiding and assisting therein. Offenses of this kind ordinarily happen when there is nobody present except those who go on the same design. If a riot should happen in the court

house, and one should kill another, this may be murder, or it may not, according to the intention with which it was done, which is always matter of fact, to be collected from the circumstances at the time. But in secret murders, premeditated and determined on, there can be no doubt of the murderous intention. There can be no doubt, if a person be present, knowing a murder is to be done, of his concurring in the act. His being there is a proof of his intent to aid and abet, else why is he there? It has been contended that proof must be given that the person accused did actually afford aid,—did lend a hand in the murder itself,—and without this proof, although he may be near by, he may be presumed to be there for an innocent purpose; he may have crept silently there to hear the news, or from mere curiosity to see what was going on. Preposterous! Absurd! Such an idea shocks all common sense. A man is found to be a conspirator to commit a murder; he has planned it; he has assisted in arranging the time, the place, and the means; and he is found in the place, and at the time, and yet it is suggested that he might have been there, not for co-operation and concurrence, but from curiosity! Such an argument deserves no answer. It would be difficult to give it one in decorous terms. Is it not to be taken for granted that a man seeks to accomplish his own purposes? When he has planned a murder, and is present at its execution, is he there to forward or to thwart his own design? Is he there to assist, or there to prevent? But “curiosity”! He

Mr. Webster's Address to the Jury

may be there from mere "curiosity"! Curiosity to witness the success of the execution of his own plan of murder! The very walls of a court house ought not to stand, the plowshare should run through the ground it stands on, where such an argument could find toleration. It is not necessary that the abettor should actually lend a hand,—that he should take a part in the act itself. If he be present ready to assist, that is assisting. Some of the doctrines advanced would acquit the defendant, though he had gone to the bedchamber of the deceased, though he had been standing by when the assassin gave the blow. This is the argument we have heard to-day. [The court here said they did not so understand the argument of counsel for defendant. Mr. Dexter said, "The intent and power alone must co-operate."] No doubt the law is that being ready to assist is assisting, if the party has the power to assist, in case of need. It is so stated by Foster, who is a high authority. "If A happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavoreth to prevent it, nor apprehendeth the murderer, nor levyeth hue and cry after him, this strange behavior of his, though highly criminal, will not of itself render him either principal or accessory." "But if a fact amounting to murder should be committed in prosecution of some unlawful purpose, though it were but a bare trespass, to which A, in the case last stated, had consented, and he had gone in order to give assistance, if need were, for carrying

it into execution, this would have amounted to murder in him, and in every person present and joining with him." "If the fact was committed in prosecution of the original purpose, which was unlawful, the whole party will be involved in the guilt of him who gave the blow; for in combinations of this kind, the mortal stroke, though given by one of the party, is considered in the eye of the law, and of sound reason too, as given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike." The author, in speaking of being present, means actual presence; not actual in opposition to constructive, for the law knows no such distinction. There is but one presence, and this is the situation from which aid, or supposed aid, may be rendered. The law does not say where the person is to go, or how near he is to go, but that he must be where he may give assistance, or where the perpetrator may believe that he may be assisted by him. Suppose that he is acquainted with the design of the murderer, and has a knowledge of the time when it is to be carried into effect, and goes out with a view to render assistance, if need be; why, then, even though the murderer does not know of this, the person so going out will be an abettor in the murder.

It is contended that the prisoner at the bar could not be a principal, he being in Brown Street, because he could not there render assistance; and you are called upon to determine this case, according as you

Mr. Webster's Address to the Jury

may be of opinion whether Brown Street was or was not a suitable, convenient, well-chosen place to aid in this murder. This is not the true question. The inquiry is not whether you would have selected this place in preference to all others, or whether you would have selected it at all. If the parties chose it, why should we doubt about it? How do we know the use they intended to make of it, or the kind of aid that he was to afford by being there? The question for you to consider is, Did the defendant go into Brown Street in aid of this murder? Did he go there by agreement,—by appointment with the perpetrator? If so, everything else follows. The main thing—indeed the only thing—is to inquire whether he was in Brown Street by appointment with Richard Crowninshield. It might be to keep general watch; to observe the lights, and advise as to time of access; to meet the murderer on his return, to advise him as to his escape; to examine his clothes, to see if any marks of blood were upon them; to furnish exchange of clothes, or new disguise, if necessary; to tell him through what streets he could safely retreat, or whether he could deposit the club in the place designed; or it might be without any distinct object, but merely to afford that encouragement which would proceed from Richard Crowninshield's consciousness that he was near. It is of no consequence whether, in your opinion, the place was well chosen, or not, to afford aid. If it was so chosen—if it was by appointment that he was there—it is enough.

Suppose Richard Crowninshield, when applied to to commit the murder, had said: "I won't do it unless there can be some one near by to favor my escape. I won't go unless you will stay in Brown Street." Upon the gentleman's argument, he would not be an aider and abettor in the murder, because the place was not well chosen, though it is apparent that the being in the place chosen was a condition without which the murder should never have happened.

You are to consider the defendant as one in the league, in the combination, to commit the murder. If he was there by appointment with the perpetrator, he is an abettor. The concurrence of the perpetrator in his being there is proved by the previous evidence of the conspiracy. If Richard Crowninshield, for any purpose whatsoever, made it a condition of the agreement that Frank Knapp should stand as backer, then Frank Knapp was an aider and abettor, no matter what the aid was, or what sort it was or degree, be it ever so little, even if it were to judge of the hour when it was best to go, or to see when the lights were extinguished, or to give an alarm if anyone approached. Who better calculated to judge of these things than the murderer himself? And, if he so determined them, that is sufficient.

Now as to the facts. Frank Knapp knew that the murder was that night to be committed. He was one of the conspirators; he knew the object; he knew the time. He had that day been to Wenham to see Joseph, and probably to Danvers to see Richard

Mr. Webster's Address to the Jury

Crowninshield, for he kept his motions secret. He had that day hired a horse and chaise of Osborn, and attempted to conceal the purpose for which it was used. He had intentionally left the place and the price blank on Osborn's books. He went to Wenham by the way of Danvers. He had been told the week before to hasten Dick. He had seen the Crowninshields several times within a few days. He had a saddle horse the Saturday night before. He had seen Mrs. Beckford at Wenham, and knew she would not return that night. She had not been away before for six weeks, and probably would not soon be again. He had just come from Wenham. Every day, for the week previous, he had visited one or another of these conspirators, save Sunday, and then probably he saw them in town. When he saw Joseph on the 6th, Joseph had prepared the house, and would naturally tell him of it. There were constant communications between them; daily and nightly visitation; too much knowledge of these parties and this transaction to leave a particle of doubt on the mind of anyone that Frank Knapp knew the murder was to be committed this night. The hour was come, and he knew it. If so, and he was in Brown Street without explaining why he was there, can the jury for a moment doubt whether he was there to countenance, aid, or support, or for curiosity alone, or to learn how the wages of sin and death were earned by the perpetrator? The perpetrator would derive courage and strength and confidence from the knowledge that one of his asso-

Classics of the Bar

ciates was near by. If he was in Brown Street, he could have been there for no other purpose. If there for this purpose, then he was, in the language of the law, present, aiding and abetting in the murder. His interest lay in being somewhere else. If he had nothing to do with the murder, no part to act, why not stay at home? Why should he jeopard his own life if it was not agreed that he should be there? He would not voluntarily go where the very place would cause him to swing if detected. He would not voluntarily assume the place of danger. His taking this place proves that he went to give aid. His staying away would have made an *alibi*. If he had nothing to do with the murder, he would be at home, where he could prove his *alibi*. He knew he was in danger, because he was guilty of the conspiracy, and, if he had nothing to do, would not expose himself to suspicion or detection. Did the prisoner at the bar countenance this murder? Did he concur, or did he nonconcur, in what the perpetrator was about to do? Would he have tried to shield him? Would he have furnished his cloak for protection? Would he have pointed out a safe way of retreat? As you would answer these questions, so you should answer the general question whether he was there consenting to the murder, or whether he was there as a spectator only.

One word more on this presence, called "constructive presence." What aid is to be rendered? Where is the line to be drawn between acting and omitting to act? Suppose he had been in the house, suppose he

Mr. Webster's Address to the Jury

had followed the perpetrator to the chamber, what could he have done? This was to be a murder by stealth. It was to be a secret assassination. It was not their purpose to have an open combat; they were to approach their victim unawares, and silently give the fatal blow. But if he had been in the chamber, no one can doubt that he would have been an abettor, because of his presence and ability to render services, if needed. What service could he have rendered if there? Could he have helped him to fly? Could he have aided the silence of his movements? Could he have facilitated his retreat on the first alarm? Surely this was a case where there was more of safety in going alone than with another; where company would only embarrass. Richard Crowninshield would prefer to go alone. He knew his errand too well. His nerves needed no collateral support. He was not the man to take with him a trembling companion. He would prefer to have his aid at a distance. He would not wish to be encumbered by his presence. He would prefer to have him out of the house. He would prefer that he should be in Brown Street. But whether in the chamber, in the house, in the garden, or in the street, whatsoever is aiding in actual presence is aiding in constructive presence; anything that is aid in one case is aid in the other. If, then, the aid be anywhere, so as to embolden the perpetrator, to afford him hope or confidence in his enterprise, it is the same as though the person stood at his elbow with his sword drawn. His being there ready to

act, with the power to act, is what makes him an abettor.

What are the facts in relation to this presence? Frank Knapp is proved to have been a conspirator; proved to have known that the deed was now to be done. Is it not probable that he was in Brown Street to concur in the murder? There were four conspirators. It was natural that some one of them should go with the perpetrator. Richard Crowninshield was to be the perpetrator; he was to give the blow. There is no evidence of any casting of the parts for the others. The defendant would probably be the man to take the second part. He was fond of exploits; he was accustomed to the use of sword canes and dirks. If any aid was required, he was the man to give it. At least there is no evidence to the contrary of this. Aid could not have been received from Joseph Knapp or from George Crowninshield. Joseph Knapp was at Wenham, and took good care to prove that he was there. George Crowninshield has proved satisfactorily where he was,—that he was in other company, such as it was, until eleven o'clock. This narrows the inquiry. This demands of the prisoner to show, if he was not in this place, where he was. It calls on him loudly to show this, and to show it truly. If he could show it, he would do it. If he does not tell, and that truly, it is against him. The defense of an *alibi* is a double-edged sword. He knew that he was in a situation where he might be called upon to account for himself. If he had had no partic-

Mr. Webster's Address to the Jury

ular appointment or business to attend to, he would have taken care to be able so to account. He would have been out of town, or in some good company. Has he accounted for himself on that night to your satisfaction? The prisoner has attempted to prove an *alibi* in two ways: In the first place, by four young men with whom he says he was in company, on the evening of the murder, from seven o'clock till near ten o'clock. This depends upon the certainty of the night. In the second place, by his family, from ten o'clock afterward. This depends upon the certainty of the time of the night. These two classes of proof have no connection with each other. One may be true, and the other false; or they may both be true, or both be false. I shall examine this testimony with some attention, because, on a former trial, it made more impression on the minds of the court than on my own mind. I think, when carefully sifted and compared, it will be found to have in it more of plausibility than reality.

Mr. Page testifies that, on the evening of the 6th of April, he was in company with Burchmore, Balch, and Forrester, and that he met the defendant about seven o'clock, near the Salem Hotel; that he afterward met him at Remond's, about nine o'clock, and that he was in company with him a considerable part of the evening. This young gentleman is a member of college, and says that he came to town the Saturday evening previous; that he is now able to say that it was the night of the murder when he walked with

Classics of the Bar

Frank Knapp, from the recollection of the fact that he called himself to an account, on the morning after the murder, as it is natural for men to do when an extraordinary occurrence happens. Gentlemen, this kind of evidence is not satisfactory; general impressions as to time are not to be relied on. If I were called on to state the particular day on which any witness testified in this cause, I could not do it. Every man will notice the same thing in his own mind. There is no one of these young men that could give an account of himself for any other day in the month of April. They are made to remember the fact, and then they think they remember the time. The witness has no means of knowing it was Tuesday, rather than any other time. He did not know it at first; he could not know it afterward. He says he called himself to an account. This has no more to do with the murder than with the man in the moon. Such testimony is not worthy to be relied on in any forty-shilling cause. What occasion had he to call himself to an account? Did he suppose that he should be suspected? Had he any intimation of this conspiracy?

Suppose, gentlemen, you were either of you asked where you were, or what you were doing, on the fifteenth day of June. You could not answer this question without calling to mind some events to make it certain. Just as well may you remember on what you dined each day of the year past. Time is identical. Its subdivisions are all alike. No man knows one day from another, or one hour from another, but

Mr. Webster's Address to the Jury

by some fact connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished by the understanding. The flow of time is known only by something which marks it; and he who speaks of the date of occurrences with nothing to guide his recollection speaks at random, and is not to be relied on. This young gentleman remembers the facts and occurrences; he knows nothing why they should not have happened on the evening of the 6th; but he knows no more. All the rest is evidently conjecture or impression. Mr. White informs you that he told him he could not tell what night it was. The first thoughts are all that are valuable in such case. They miss the mark by taking second aim. Mr. Balch believes, but is not sure, that he was with Frank Knapp on the evening of the murder. He has given different accounts of the time. He has no means of making it certain. All he knows is that it was some evening before Fast Day; but whether Monday, Tuesday, or Saturday, he cannot tell. Mr. Burchmore says, to the best of his belief, it was the evening of the murder. Afterward he attempts to speak positively, from recollection that he mentioned the circumstance to William Peirce as he went to the Mineral Spring on Fast Day. Last Monday morning he told Colonel Putnam he could not fix the time. This witness stands in a much worse plight than either of the others. It is difficult to reconcile all he has said with any belief in the accuracy of his recollections. Mr. Forrester does not speak with any certainty as

to the night, and it is very certain that he told Mr. Loring and others that he did not know what night it was.

Now, what does the testimony of these four young men amount to? The only circumstance by which they approximate to an identifying of the night is that three of them say it was cloudy. They think their walk was either on Monday or Tuesday evening, and it is admitted that Monday evening was clear, whence they draw the inference that it must have been Tuesday. But, fortunately, there is one fact disclosed in their testimony that settles the question. Balch says that on the evening, whenever it was, he saw the prisoner. The prisoner told him he was going out of town on horseback for a distance of about twenty minutes' drive, and that he was going to get a horse at Osborn's. This was about seven o'clock. At about nine, Balch says he saw the prisoner again, and was then told by him that he had had his ride, and had returned. Now, it appears by Osborn's books that the prisoner had a saddle horse from his stable, not on Tuesday evening, the night of the murder, but on the Saturday evening previous. This fixes the time about which these young men testify, and is a complete answer and refutation of the attempted *alibi* on Tuesday evening.

I come now to speak of the testimony adduced by the defendant to explain where he was after ten o'clock on the night of the murder. This comes chiefly from members of the family,—from his father and brothers.

Mr. Webster's Address to the Jury

It is agreed that the affidavit of the prisoner should be received as evidence of what his brother, Samuel H. Knapp, would testify if present. Samuel H. Knapp says that, about ten minutes past ten o'clock, his brother, Frank Knapp, on his way to bed, opened his chamber door, made some remarks, closed the door, and went to his chamber, and that he did not hear him leave it afterward. How is this witness able to fix the time at ten minutes past ten? There is no circumstance mentioned by which he fixes it. He had been in bed, probably asleep, and was aroused from his sleep by the opening of the door. Was he in a situation to speak of time with precision? Could he know, under such circumstances, whether it was ten minutes past ten or ten minutes before eleven when his brother spoke to him? What would be the natural result in such a case? But we are not left to conjecture this result. We have positive testimony on this point. Mr. Webb tells you that Samuel told him, on the 8th of June, "that he did not know what time his brother Frank came home, and that he was not at home when he went to bed." You will consider this testimony of Mr. Webb as indorsed upon this affidavit, and, with this indorsement upon it, you will give it its due weight. This statement was made to him after Frank was arrested.

I come to the testimony of the father. I find myself incapable of speaking of him or his testimony with severity. Unfortunate old man! Another Lear, in the conduct of his children; another Lear, I apprehend,

in the effect of his distress upon his mind and understanding. He is brought here to testify, under circumstances that disarm severity, and call loudly for sympathy. Though it is impossible not to see that his story cannot be credited, yet I am unable to speak of him otherwise than in sorrow and grief. Unhappy father! he strives to remember, perhaps persuades himself that he does remember, that on the evening of the murder he was himself at home at ten o'clock. He thinks, or seems to think, that his son came in at about five minutes past ten. He fancies that he remembers his conversation; he thinks he spoke of bolting the door; he thinks he asked the time of night; he seems to remember his then going to his bed. Alas! these are but the swimming fancies of an agitated and distressed mind. Alas! they are but the dreams of hope, its uncertain lights, flickering on the thick darkness of parental distress. Alas! the miserable father knows nothing, in reality, of all these things. Mr. Shepard says that the first conversation he had with Mr. Knapp was soon after the murder, and before the arrest of his sons. Mr. Knapp says it was after the arrest of his sons. His own fears led him to say to Mr. Shepard that his "son Frank was at home that night, and so Phippen told him," or "as Phippen told him." Mr. Shepard says that he was struck with the remark at the time; that it made an unfavorable impression on his mind. He does not tell you what that impression was, but when you connect it with the previous inquiry he had made, whether Frank

Mr. Webster's Address to the Jury

had continued to associate with the Crowninshields, and recollect that the Crowninshields were then known to be suspected of this crime, can you doubt what this impression was? Can you doubt as to the fears he then had? This poor old man tells you that he was greatly perplexed at the time; that he found himself in embarrassed circumstances; that on this very night he was engaged in making an assignment of his property to his friend, Mr. Shepard. If ever charity should furnish a mantle for error, it should be here. Imagination cannot picture a more deplorable, distressed condition. The same general remarks may be applied to his conversation with Mr. Treadwell as have been made upon that with Mr. Shepard. He told him that he believed Frank was at home about the usual time. In his conversations with either of these persons, he did not pretend to know, of his own knowledge, the time that he came home. He now tells you positively that he recollects the time, and that he so told Mr. Shepard. He is directly contradicted by both these witnesses, as respectable men as Salem affords. This idea of an *alibi* is of recent origin. Would Samuel Knapp have gone to sea if it were then thought of? His testimony, if true, was too important to be lost. If there be any truth in this part of the *alibi*, it is so near in point of time that it cannot be relied on. The mere variation of half an hour would avoid it. The mere variations of different timepieces would explain it. Has the defendant proved where he was on that night? If you doubt

Classics of the Bar

about it, there is an end of it. The burden is upon him to satisfy you beyond all reasonable doubt. Osborn's books, in connection with what the young men state, are conclusive, I think, on this point. He has not, then, accounted for himself. He has attempted it, and has failed. I pray you to remember, gentlemen, that this is a case in which the prisoner would, more than any other, be rationally able to account for himself on the night of the murder if he could do so. He was in the conspiracy, he knew the murder was then to be committed, and, if he himself was to have no hand in its actual execution, he would of course, as a matter of safety and precaution, be somewhere else, and be able to prove afterward that he had been somewhere else. Having this motive to prove himself elsewhere, and the power to do it if he were elsewhere, his failing in such proof must necessarily leave a very strong inference against him.

But, gentlemen, let us now consider what is the evidence produced on the part of the government to prove that John Francis Knapp, the prisoner at the bar, was in Brown Street on the night of the murder. This is a point of vital importance in this cause. Unless this be made out, beyond reasonable doubt, the law of presence does not apply to the case. The government undertakes to prove that he was present, aiding in the murder, by proving that he was in Brown Street for this purpose. Now, what are the undoubted facts? They are that two persons were seen in that street, several times during that evening, under

Mr. Webster's Address to the Jury

suspicious circumstances,—under such circumstances as induced those who saw them to watch their movements. Of this there can be no doubt. Mirick saw a man standing at the post opposite his store from fifteen minutes before nine until twenty minutes after, dressed in a full frock-coat, glazed cap, and so forth, in size and general appearance answering to the prisoner at the bar. This person was waiting there, and, whenever anyone approached him, he moved to and from the corner, as though he would avoid being suspected or recognized. Afterward, two persons were seen by Webster walking in Howard Street with a slow, deliberate movement that attracted his attention. This was about half-past nine. One of these he took to be the prisoner at the bar; the other he did not know. About half-past ten a person is seen sitting on the rope-walk steps, wrapped in a cloak. He drops his head when passed, to avoid being known. Shortly after, two persons are seen to meet in this street, without ceremony or salutation, and in a hurried manner to converse for a short time, then to separate, and run off with great speed. Now, on this same night, a gentleman is slain,—murdered in his bed,—his house being entered by stealth from without, and his house situated within three hundred feet of this street. The windows of his chamber were in plain sight from this street. A weapon of death is afterward found in a place where these persons were seen to pass, in a retired place, around which they had been seen lingering. It is now known that this mur-

der was committed by four persons, conspiring together for this purpose. No account is given who these suspected persons thus seen in Brown Street and its neighborhood were. Now I ask, gentlemen, whether you or any man can doubt that this murder was committed by the persons who were thus in and about Brown Street? Can any person doubt that they were there for purposes connected with this murder? If not for this purpose, what were they there for? When there is a cause so near at hand, why wander into conjecture for an explanation? Common sense requires you to take the nearest adequate cause for a known effect. Who were these suspicious persons in Brown Street? There was something extraordinary about them; something noticeable, and noticed at the time; something in their appearance that aroused suspicion. And a man is found the next morning murdered in the near vicinity. Now, so long as no other account shall be given of those suspicious persons, so long the inference must remain irresistible that they were the murderers. Let it be remembered that it is already shown that this murder was the result of conspiracy and of concert; let it be remembered that the house, having been opened from within, was entered by stealth from without; let it be remembered that Brown Street, where these persons were repeatedly seen under such suspicious circumstances, was a place from which every occupied room in Mr. White's house is clearly seen; let it be remembered that the place, though thus very near to Mr. White's house, is

Mr. Webster's Address to the Jury

a retired and lonely place; and let it be remembered that the instrument of death was afterward found concealed very near the same spot. Must not every man come to the conclusion that these persons thus seen in Brown Street were the murderers? Every man's own judgment, I think, must satisfy him that this must be so. It is a plain deduction of common sense. It is a point on which each one of you may reason like a Hale or a Mansfield. The two occurrences explain each other. The murder shows why these persons were thus lurking, at that hour, in Brown Street, and their lurking in Brown Street shows who committed the murder. If, then, the persons in and about Brown Street were the plotters and executors of the murder of Captain White, we know who they were, and you know that there is one of them. This fearful concatenation of circumstances puts him to an account. He was a conspirator. He had entered into this plan of murder. The murder is committed, and he is known to have been within three minutes' walk of the place. He must account for himself. He has attempted this, and failed. Then, with all these general reasons to show he was actually in Brown Street, and his failures in his *alibi*, let us see what is the direct proof of his being there. But first let me ask, Is it not very remarkable that there is no attempt to show where Richard Crowninshield, Jr., was on that night? We hear nothing of him. He was seen in none of his usual haunts about the town. Yet, if he was the actual perpetrator of the murder, which nobody doubts, he was in the town

Classics of the Bar

somewhere. Can you therefore entertain a doubt that he was one of the persons seen in Brown Street? And as to the prisoner, you will recollect that, since the testimony of the young men has failed to show where he was on that evening, the last we hear or know of him on the day preceding the murder is that at four o'clock p. m. he was at his brother's in Wenham. He had left home, after dinner, in a manner doubtless designed to avoid observation, and had gone to Wenham, probably by way of Danvers. As we hear nothing of him after four o'clock p. m. for the remainder of the day and evening; as he was one of the conspirators; as Richard Crowninshield, Jr., was another; as Richard Crowninshield, Jr., was in town in the evening, and yet seen in no usual place of resort,—the inference is very fair that Richard Crowninshield, Jr., and the prisoner were together, acting in execution of their conspiracy. Of the four conspirators, J. J. Knapp, Jr., was at Wenham, and George Crowninshield has been accounted for, so that, if the persons seen in Brown Street were the murderers, one of them must have been Richard Crowninshield, Jr., and the other must have been the prisoner at the bar.

Now as to the proof of his identity with one of the persons seen in Brown Street. Mr. Mirick, a cautious witness, examined the person he saw closely, in a light night, and says that he thinks the prisoner at the bar is the person, and that he should not hesitate at all if he were seen in the same dress. His opinion is

Mr. Webster's Address to the Jury

formed partly from his own observation, and partly from the description of others; but this description turns out to be only in regard to the dress. It is said that he is now more confident than on the former trial. If he has varied in his testimony, make such allowance as you may think proper. I do not perceive any material variance. He thought him the same person when he was first brought to court, and as he saw him get out of the chaise. This is one of the cases in which a witness is permitted to give an opinion. This witness is as honest as yourselves,—neither willing nor swift; but he says he believes it was the man. His words are, “This is my opinion,” and this opinion it is proper for him to give. If partly founded on what he has heard, then this opinion is not to be taken; but if on what he saw, then you can have no better evidence. I lay no stress on similarity of dress. No man will ever lose his life by my voice on such evidence. But then it is proper to notice that no inferences drawn from any dissimilarity of dress can be given in the prisoner’s favor, because, in fact, the person seen by Mirick was dressed like the prisoner. The description of the person seen by Mirick answers to that of the prisoner at the bar. In regard to the supposed discrepancy of statements, before and now, there would be no end to such minute inquiries. It would not be strange if witnesses should vary. I do not think much of slight shades of variation. If I believe the witness is honest, that is enough. If he has expressed himself more strongly

Classics of the Bar

now than then, this does not prove him false. Peter E. Webster saw the prisoner at the bar, as he then thought, and still thinks, walking in Howard Street at half-past nine o'clock. He then thought it was Frank Knapp, and has not altered his opinion since. He knew him well; he had long known him. If he then thought it was he, this goes far to prove it. He observed him the more, as it was unusual to see gentlemen walk there at that hour. It was a retired, lonely street. Now, is there reasonable doubt that Mr. Webster did see him there that night? How can you have more proof than this? He judged by his walk, by his general appearance, by his deportment. We all judge in this manner. If you believe he is right, it goes a great way in the case. But then this person, it is said, had a cloak on, and that he could not, therefore, be the same person that Mirick saw. If we were treating of men that had no occasion to disguise themselves or their conduct, there might be something in this argument. But as it is, there is little in it. It may be presumed that they would change their dress. This would help their disguise. What is easier than to throw off a cloak, and again put it on? Perhaps he was less fearful of being known when alone than when with the perpetrator. Mr. Southwick swears all that a man can swear. He has the best means of judging that could be had at the time. He tells you that he left his father's house at half-past ten o'clock, and, as he passed to his own house in Brown Street, he saw a man sitting on the steps of the rope-walk; that he

Mr. Webster's Address to the Jury

passed him three times, and each time he held down his head, so that he did not see his face: that the man had on a cloak, which was not wrapped around him, and a glazed cap; that he took the man to be Frank Knapp at the time; that, when he went into his house, he told his wife that he thought it was Frank Knapp; that he knew him well, having known him from a boy. And his wife swears that he did so tell her when he came home. What could mislead this witness at the time? He was not then suspecting Frank Knapp of anything. He could not then be influenced by any prejudice. If you believe that the witness saw Frank Knapp in this position at this time, it proves the case. Whether you believe it or not depends upon the credit of the witness. He swears it. If true, it is solid evidence. Mrs. Southwick supports her husband. Are they true? Are they worthy of belief? If he deserves the epithets applied to him, then he ought not to be believed. In this fact they cannot be mistaken; they are right, or they are perjured. As to his not speaking to Frank Knapp, that depends upon their intimacy. But a very good reason is, Frank chose to disguise himself. This makes nothing against his credit. But it is said that he should not be believed. And why? Because, it is said, he himself now tells you that, when he testified before the grand jury at Ipswich, he did not then say that he thought the person he saw in Brown Street was Frank Knapp, but that "the person was about the size of Selman." The means of attacking him, therefore, come from himself. If

he is a false man, why should he tell truths against himself? They rely on his veracity to prove that he is a liar. Before you can come to this conclusion, you will consider whether all the circumstances are now known that should have a bearing on this point. Suppose that, when he was before the grand jury, he was asked by the attorney this question, "Was the person you saw in Brown Street about the size of Selman?" and he answered, "Yes." This was all true. Suppose, also, that he expected to be inquired of further, and no further questions were put to him. Would it not be extremely hard to impute to him perjury for this? It is not uncommon for witnesses to think that they have done all their duty when they have answered the questions put to them. But suppose that we admit that he did not then tell all he knew this does not affect the fact at all, because he did tell, at the time, in the hearing of others, that the person he saw was Frank Knapp. There is not the slightest suggestion against the veracity or accuracy of Mrs. Southwick. Now, she swears positively that her husband came into the house and told her that he had seen a person on the rope-walk steps, and believed it was Frank Knapp. It is said that Mr. Southwick is contradicted, also, by Mr. Shillaber. I do not so understand Mr. Shillaber's testimony. I think what they both testify is reconcilable and consistent. My learned brother said, on a similar occasion, that there is more probability, in such cases, that the persons hearing should misunderstand, than that the person

Mr. Webster's Address to the Jury

speaking should contradict himself. I think the same remark applicable here. You have all witnessed the uncertainty of testimony when witnesses are called to testify what other witnesses said. Several respectable counselors have been summoned, on this occasion, to give testimony of that sort. They have, every one of them, given different versions. They all took minutes at the time, and without doubt intend to state the truth. But still they differ. Mr. Shillaber's version is different from everything that Southwick has stated elsewhere. But little reliance is to be placed on slight variations in testimony, unless they are manifestly intentional. I think that Mr. Shillaber must be satisfied that he did not rightly understand Mr. Southwick. I confess I misunderstood Mr. Shillaber on the former trial, if I now rightly understand him. I therefore did not then recall Mr. Southwick to the stand. Mr. Southwick, as I read it, understood Mr. Shillaber as asking him about a person coming out of Newbury Street, and whether, for aught he knew, it might not be Richard Crowninshield, Jr. He answered that he could not tell. He did not understand Mr. Shillaber as questioning him as to the person whom he saw sitting on the steps of the rope-walk. Southwick, on this trial, having heard Mr. Shillaber, has been recalled to the stand, and states that Mr. Shillaber entirely misunderstood him. This is certainly most probable, because the controlling fact in the case is not controverted,—that is, that Southwick did tell his wife, at the very moment he entered his house, that he had

Classics of the Bar

seen a person on the rope-walk steps, whom he believed to be Frank Knapp. Nothing can prove with more certainty than this: that Southwick at the time thought the person whom he thus saw to be the prisoner at the bar. Mr. Bray is an acknowledged accurate and intelligent witness. He was highly complimented by my brother on the former trial, although he now charges him with varying his testimony. What could be his motive? You will be slow in imputing to him any design of this kind. I deny altogether that there is any contradiction. There may be differences, but not contradiction. These arise from the difference in the questions put; the difference between believing and knowing. On the first trial, he said he did not know the person, and now says the same. Then, we did not do all we had a right to do. We did not ask him who he thought it was. Now, when so asked, he says he believes it was the prisoner at the bar. If he had then been asked this question, he would have given the same answer. That he has expressed himself more strongly, I admit; but he has not contradicted himself. He is more confident now, and that is all. A man may not assert a thing, and still may have no doubt upon it. Cannot every man see this distinction to be consistent? I leave him in that attitude; that only is the difference. On questions of identity, opinion is evidence. We may ask the witness, either if he knew who the person seen was, or who he thinks he was. And he may well answer as Captain Bray has answered, that he does not

Mr. Webster's Address to the Jury

know who it was, but that he thinks it was the prisoner. We have offered to produce witnesses to prove that, as soon as Bray saw the prisoner, he pronounced him the same person. We are not at liberty to call them to corroborate our own witness. How, then, could this fact of the prisoner's being in Brown Street be better proved? If ten witnesses had testified to it, it would be no better. Two men, who knew him well, took it to be Frank Knapp, and one of them so said, when there was nothing to mislead them. Two others, who examined him closely, now swear to their opinion that he is the man. Miss Jaqueth saw three persons pass by the rope-walk several evenings before the murder. She saw one of them pointing toward Mr. White's house. She noticed that another had something which appeared to be like an instrument of music; that he put it behind him, and attempted to conceal it. Who were these persons? This was but a few steps from the place where this apparent instrument of music (of music such as Richard Crowninshield, Jr., spoke of to Palmer) was afterward found. These facts prove this a point of rendezvous for these parties. They show Brown Street to have been the place for consultation and observation, and to this purpose it was well suited. Mr. Burns's testimony is also important. What was the defendant's object in his private conversation with Burns? He knew that Burns was out that night; that he lived near Brown Street, and that he had probably seen him, and he wished him to say nothing. He said to

Burns, "If you saw any of your friends out that night, say nothing about it; my brother Joe and I are your friends." This is plain proof that he wished to say to him, if you saw me in Brown Street that night, say nothing about it. But it is said that Burns ought not to be believed because he mistook the color of the dagger, and because he has varied in his description of it. These are slight circumstances, if his general character be good. To my mind, they are of no importance. It is for you to make what deduction you may think proper, on this account, from the weight of his evidence. His conversation with Burns, if Burns is believed, shows two things: First, that he desired Burns not to mention it, if he had seen him on the night of the murder; second, that he wished to fix the charge of murder on Mr. Stephen White. Both of these prove his own guilt.

I think you will be of opinion that Brown Street was a probable place for the conspirators to assemble, and for an aid to be stationed. If we knew their whole plan, and if we were skilled to judge in such a case, then we could perhaps determine on this point better. But it is a retired place, and still commands a full view of the house; a lonely place, but still a place of observation; not so lonely that a person would excite suspicion to be seen walking there in an ordinary manner; not so public as to be noticed by many. It is near enough to the scene of action in point of law. It was their point of centrality. The club was found near the spot, in a place provided for it, in a place that had

Mr. Webster's Address to the Jury

been previously hunted out, in a concerted place of concealment. Here was their point of rendezvous; here might the lights be seen; here might an aid be secreted; here was he within call; here might he be aroused by the sound of the whistle; here might he carry the weapon; here might he receive the murderer after the murder.

Then, gentlemen, the general question occurs, is it satisfactorily proved, by all these facts and circumstances, that the defendant was in and about Brown Street on the night of the murder? Considering that the murder was effected by a conspiracy; considering that he was one of the four conspirators; considering that two of the conspirators have accounted for themselves on the night of the murder, and were not in Brown Street; considering that the prisoner does not account for himself, nor show where he was; considering that Richard Crowninshield, the other conspirator and the perpetrator, is not accounted for, nor shown to be elsewhere; considering that it is now past all doubt that two persons were seen lurking in and about Brown Street at different times, avoiding observation, and exciting so much suspicion that the neighbors actually watched them; considering that, if these persons thus lurking in Brown Street at that hour were not the murderers, it remains to this day wholly unknown who they were or what their business was; considering the testimony of Miss Jaqueth, and that the club was afterward found near this place; considering, finally, that Webster and Southwick saw these

persons, and then took one of them for the defendant, and that Southwick then told his wife so, and that Bray and Mirick examined them closely, and now swear to their belief that the prisoner was one of them,—it is for you to say, putting these considerations together, whether you believe the prisoner was actually in Brown Street at the time of the murder.

By the counsel for the prisoner, much stress has been laid upon the question whether Brown Street was a place in which aid could be given,—a place in which actual assistance could be rendered in this transaction. This must be mainly decided by their own opinion who selected the place; by what they thought at the time, according to their plan of operation. If it was agreed that the prisoner should be there to assist, it is enough. If they thought the place proper for their purpose, according to their plan, it is sufficient. Suppose we could prove expressly that they agreed that Frank should be there, and he was there, and you should think it not a well-chosen place for aiding and abetting, must he be acquitted? No! It is not what I think or you think of the appropriateness of the place; it is what they thought at the time. If the prisoner was in Brown Street by appointment and agreement with the perpetrator, for the purpose of giving assistance if assistance should be needed, it may safely be presumed that the place was suited to such assistance as it was supposed by the parties might chance to become requisite. If in Brown Street, was he there by appointment? Was he there to aid, if aid were

Mr. Webster's Address to the Jury

necessary? Was he there for or against the murderer? to concur, or to oppose? to favor, or to thwart? Did the perpetrator know he was there,—there waiting? If so, then it follows that he was there by appointment. He was at the post half an hour. He was waiting for somebody. This proves appointment, arrangement, previous agreement; then it follows that he was there to aid, to encourage, to embolden the perpetrator, and that is enough. If he were in such a situation as to afford aid, or that he was relied upon for aid, then he was aiding and abetting. It is enough that the conspirator desired to have him there. Besides, it may be well said that he could afford just as much aid there as if he had been in Essex Street,—as if he had been standing even at the gate or at the window. It was not an act of power against power that was to be done; it was a secret act, to be done by stealth. The aid was to be placed in a position secure from observation. It was important to the security of both that he should be in a lonely place. Now, it is obvious that there are many purposes for which he might be in Brown Street: (1) Richard Crowninshield might have been secreted in the garden, and waiting for a signal; (2) or he might be in Brown Street to advise him as to the time of making his entry into the house; (3) or to favor his escape; (4) or to see if the street was clear when he came out; (5) or to conceal the weapon or the clothes; (6) to be ready for any unforeseen contingency. Richard Crowninshield lived in Danvers. He would retire by the most secret way.

Brown Street is that way. If you find him there, can you doubt why he was there? If, gentlemen, the prisoner went into Brown Street, by appointment with the perpetrator, to render aid or encouragement in any of these ways, he was present, in legal contemplation, aiding and abetting in this murder. It is not necessary that he should have done anything; it is enough that he was ready to act, and in a place to act. If his being in Brown Street, by appointment, at the time of the murder, emboldened the purpose and encouraged the heart of the murderer by the hope of instant aid if aid should become necessary, then, without doubt, he was present, aiding and abetting, and was a principal in the murder.

I now proceed, gentlemen, to the consideration of the testimony of Mr. Colman. Although this evidence bears on every material part of the cause, I have purposely avoided every comment on it till the present moment, when I have done with the other evidence in the case. As to the admission of this evidence, there has been a great struggle, and its importance demanded it. The general rule of law is that confessions are to be received as evidence. They are entitled to great or to little consideration, according to the circumstances under which they are made. Voluntary, deliberate confessions are the most important and satisfactory evidence; but confessions hastily made, or improperly obtained, are entitled to little or no consideration. It is always to be inquired whether they were purely voluntary, or were made under any

Mr. Webster's Address to the Jury

undue influence of hope or fear; for, in general, if any influence were exerted on the mind of the person confessing, such confessions are not to be submitted to a jury. Who is Mr. Colman? He is an intelligent, accurate and cautious witness; a gentleman of high and well-known character, and of unquestionable veracity; as a clergyman, highly respectable; as a man, of fair name and fame. Why was Mr. Colman with the prisoner? Joseph J. Knapp was his parishioner; he was the head of a family, and had been married by Mr. Colman. The interests of that family were dear to him. He felt for their afflictions, and was anxious to alleviate their sufferings. He went from the purest and best of motives to visit Joseph Knapp. He came to save, not to destroy; to rescue, not to take away life. In this family he thought there might be a chance to save one. It is a misconstruction of Mr. Colman's motives, at once the most strange and the most uncharitable,—a perversion of all just views of his conduct and intentions the most unaccountable,—to represent him as acting, on this occasion, in hostility to any one, or as desirous of injuring or endangering any one. He has stated his own motives and his own conduct in a manner to command universal belief and universal respect. For intelligence, for consistency, for accuracy, for caution, for candor, never did witness acquit himself better, or stand fairer. In all that he did as a man, and all he has said as a witness, he has shown himself worthy of entire regard.

Now, gentlemen, very important confessions made

by the prisoner are sworn to by Mr. Colman. They were made in the prisoner's cell, where Mr. Colman had gone with the prisoner's brother, N. Phippen Knapp. Whatever conversation took place was in the presence of N. P. Knapp. Now, on the part of the prisoner, two things are asserted: First, that such inducements were suggested to the prisoner, in this interview, that no confessions made by him ought to be received; second, that, in point of fact, he made no such confessions as Mr. Colman testifies to, nor, indeed, any confessions at all. These two propositions are attempted to be supported by the testimony of N. P. Knapp. These two witnesses, Mr. Colman and N. P. Knapp, differ entirely. There is no possibility of reconciling them. No charity can cover both. One or the other has sworn falsely. If N. P. Knapp be believed, Mr. Colman's testimony must be wholly disregarded. It is, then, a question of credit, —a question of belief between the two witnesses. As you decide between these, so you will decide on all this part of the case. Mr. Colman has given you a plain narrative, a consistent account, and has uniformly stated the same things. He is not contradicted, except by the testimony of Phippen Knapp. He is influenced, as far as we can see, by no bias or prejudice, any more than other men, except so far as his character is now at stake. He has feelings on this point, doubtless, and ought to have. If what he has stated be not true, I cannot see any ground for his escape. If he be a true man, he must have heard

Mr. Webster's Address to the Jury

what he testifies. No treachery of memory brings to memory things that never took place. There is no reconciling his evidence with good intention if the facts in it are not as he states them. He is on trial as to his veracity. The relation in which the other witness stands deserves your careful consideration. He is a member of the family. He has the lives of two brothers depending, as he may think, on the effect of his evidence; depending on every word he speaks. I hope he has not another responsibility resting upon him. By the advice of a friend, and that friend Mr. Colman, J. Knapp made a full and free confession, and obtained a promise of pardon. He has since, as you know, probably by the advice of other friends, retracted that confession, and rejected the offered pardon. Events will show who of these friends and advisers advised him best and befriended him most. In the meantime, if this brother, the witness, be one of these advisers, and advised the retraction, he has, most emphatically, the lives of his brothers resting upon his evidence and upon his conduct. Compare the situation of these two witnesses. Do you not see mighty motive enough on the one side, and want of all motive on the other? I would gladly find an apology for that witness in his agonized feelings, in his distressed situation; in the agitation of that hour, or of this. I would gladly impute it to error, or to want of recollection, to confusion of mind, or disturbance of feeling. I would gladly impute to any pardonable source that which cannot be reconciled to facts

and to truth; but, even in a case calling for so much sympathy, justice must yet prevail, and we must come to the conclusion, however reluctantly, which that demands from us. It is said Phippen Knapp was probably correct, because he knew he should probably be called as a witness. Witness to what? When he says there was no confession, what could he expect to bear witness of? But I do not put it on the ground that he did not hear. I am compelled to put it on the other ground, that he did hear, and does not now truly tell what he heard. If Mr. Colman were out of the case, there are other reasons why the story of Phippen Knapp should not be believed. It has in it inherent improbabilities. It is unnatural, and inconsistent with the accompanying circumstances. He tells you that they went "to the cell of Frank, to see if he had any objection to taking a trial, and suffering his brother to accept the offer of pardon,"—in other words, to obtain Frank's consent to Joseph's making a confession,—and, in case this consent was not obtained, that the pardon would be offered to Frank. Did they bandy about the chance of life, between these two, in this way? Did Mr. Colman after having given this pledge to Joseph, and after having received a disclosure from Joseph, go to the cell of Frank for such a purpose as this? It is impossible; it cannot be so. Again, we know that Mr. Colman found the club the next day; that he went directly to the place of deposit, and found it at the first attempt, exactly where he says he had been informed it was. Now,

Mr. Webster's Address to the Jury

Phippen Knapp says that Frank had stated nothing respecting the club; that it was not mentioned in that conversation. He says, also, that he was present in the cell of Joseph all the time that Mr. Colman was there; that he believes he heard all that was said in Joseph's cell; and that he did not himself know where the club was, and never had known where it was, until he heard it stated in court. Now, it is certain that Mr. Colman says he did not learn the particular place of deposit of the club from Joseph; that he only learned from him that it was deposited under the steps of the Howard Street meeting house, without defining the particular steps. It is certain, also, that he had more knowledge of the position of the club than this; else how could he have placed his hand on it so readily? and where else could he have obtained this knowledge, except from Frank? My point is to show that Phippen Knapp's story is not true,—is not consistent with itself; that, taking it for granted, as he says, that he heard all that was said to Mr. Colman in both cells, by Joseph and by Frank, and that Joseph did not state particularly where the club was deposited, and that he knew as much about the place of deposit of the club as Mr. Colman knew, why, then, Mr. Colman must either have been miraculously informed respecting the club, or Phippen Knapp has not told you the whole truth. There is no reconciling this without supposing that Mr. Colman has misrepresented what took place in Joseph's cell, as well as what took place in Frank's cell. Again, Phippen Knapp is directly

contradicted by Mr. Wheatland. Mr. Wheatland tells the same story, as coming from Phippen Knapp, that Colman now tells. Here there are two against one. Phippen Knapp says that Frank made no confessions, and that he said he had none to make. In this he is contradicted by Wheatland. He, Phippen Knapp, told Wheatland that Mr. Colman did ask Frank some questions, and that Frank answered them. He told him also what these answers were. Wheatland does not recollect the questions or answers, but recollects his reply, which was: "Is not this premature? I think this answer is sufficient to make Frank a principal." Here Phippen Knapp opposes himself to Wheatland, as well as to Mr. Colman.

Do you believe Phippen Knapp against these two respectable witnesses, or them against him? Is not Mr. Colman's testimony credible, natural, and proper? To judge of this, you must go back to that scene. The murder had been committed. The two Knapps were now arrested. Four persons were already in jail supposed to be concerned in it,—the Crowninshields, and Selman, and Chase. Another person at the eastward was supposed to be in the plot. It was important to learn the facts. To do this, some one of those suspected must be admitted to turn state's witness. The contest was, who should have this privilege? It was understood that it was about to be offered to Palmer, then in Maine. There was no good reason why he should have the preference. Mr. Colman felt interested for the family of the Knapps, and par-

Mr. Webster's Address to the Jury

ticularly for Joseph. He was a young man who had hitherto maintained a fair standing in society. He was a husband. Mr. Colman was particularly intimate with his family. With these views he went to the prison. He believed that he might safely converse with the prisoner, because he thought confessions made to a clergyman were sacred, and that he could not be called upon to disclose them. He went, the first time, in the morning, and was requested to come again. He went again at three o'clock, and was requested to call again at five o'clock. In the meantime he saw the father of Phippen, and they wished he would not go again, because it would be said the prisoners were making confession. He said he had engaged to go again at five o'clock, but would not, if Phippen would excuse him to Joseph. Phippen engaged to do this, and to meet him at his office at five o'clock. Mr. Colman went to the office at the time, and waited; but, as Phippen was not there, he walked down street, and saw him coming from the jail. He met him, and while in conversation near the church, he saw Mrs. Beckford and Mrs. Knapp going in a chaise toward the jail. He hastened to meet them, as he thought it not proper for them to go in at that time. While conversing with them near the jail, he received two distinct messages from Joseph that he wished to see him. He thought it proper to go, and, accordingly, went to Joseph's cell, and it was while there that the disclosures were made. Before Joseph had finished his statement, Phippen came to the door.

He was soon after admitted. A short interval ensued, and they went together to the cell of Frank. Mr. Colman went in by invitation of Phippen. He had come directly from the cell of Joseph, where he had for the first time learned the incidents of the tragedy. He was incredulous as to some of the facts which he had learned, they were so different from his previous impressions. He was desirous of knowing whether he could place confidence in what Joseph had told him. He therefore put the questions to Frank as he has testified before you, in answer to which Frank Knapp informed him: (1) That the murder took place between ten and eleven o'clock; (2) that Richard Crowninshield was alone in the house; (3) that he, Frank Knapp, went home afterward; (4) that the club was deposited under the steps of the Howard Street meeting house, and under the part nearest the burying ground, in a rat hole; (5) that the dagger or daggers had been worked up at the factory. It is said that these five answers just fit the case; that they are just what was wanted, and neither more nor less. True, they are; but the reason is because truth always fits. Truth is always congruous, and agrees with itself. Every truth in the universe agrees with every other truth in the universe; whereas falsehoods not only disagree with truths, but usually quarrel among themselves. Surely Mr. Colman is influenced by no bias, no prejudice. He has no feelings to warp him, except, now that he is contradicted, he may feel an interest to be believed. If you believe

Mr. Webster's Address to the Jury

Mr. Colman, then the evidence is fairly in the case.

I shall now proceed on the ground that you do believe Mr. Colman. When told that Joseph had determined to confess, the defendant said, "It is hard or unfair that Joseph should have the benefit of confessing, since the thing was done for his benefit." What thing was done for his benefit? Does not this carry an implication of the guilt of the defendant? Does it not show that he had a knowledge of the object and history of the murder? The defendant said, "I told Joseph, when he proposed it, that it was a silly business, and would get us into trouble." He knew, then, what this business was. He knew that Joseph proposed it, and that he agreed to it, else he could not get us into trouble. He understood its bearing and its consequences. Thus much was said, under circumstances that make it clearly evidence against him, before there is any pretense of an inducement held out. And does not this prove him to have had a knowledge of the conspiracy? He knew the daggers had been destroyed, and he knew who committed the murder. How could he have innocently known these facts? Why, if by Richard's story, this shows him guilty of a knowledge of the murder and of the conspiracy. More than all, he knew when the deed was done, and that he went home afterward. This shows his participation in that deed. "Went home afterward"! Home from what scene? home from what fact? home from what transaction? home from what place? This con-

firms the supposition that the prisoner was in Brown Street for the purposes ascribed to him. These questions were directly put, and directly answered. He does not intimate that he received the information from another. Now, if he knows the time, and went home afterward, and does not excuse himself, is not this an admission that he had a hand in this murder? Already proved to be a conspirator in the murder, he now confesses that he knew who did it, at what time it was done, that he was himself out of his own house at the time, and went home afterward. Is not this conclusive, if not explained? Then comes the club. He told where it was. This is like possession of stolen goods. He is charged with the guilty knowledge of this concealment. He must show, not say, how he came by this knowledge. If a man be found with stolen goods, he must prove how he came by them. The place of deposit of the club was premeditated and selected, and he knew where it was.

Joseph Knapp was an accessory, and an accessory only; he knew only what was told him. But the prisoner knew the particular spot in which the club might be found. This shows his knowledge something more than that of an accessory. This presumption must be rebutted by evidence, or it stands strong against him. He has too much knowledge of this transaction to have come innocently by it. It must stand against him until he explains it.

This testimony of Mr. Colman is represented as new matter, and therefore an attempt has been made to

Mr. Webster's Address to the Jury

excite a prejudice against it. It is not so. How little is there in it, after all, that did not appear from other sources? It is mainly confirmatory. Compare what you learn from this confession with what you before knew: As to its being proposed by Joseph, was not that known? As to Richard's being alone in the house, was not that known? As to the daggers, was not that known? As to the time of the murder, was not that known? As to his being out that night, was not that known? As to his returning afterward, was not that known? As to the club, was not that known? So this information concerns what was known before, and fully confirms it.

One word as to the interview between Mr. Colman and Phippen Knapp on the turnpike. It is said that Mr. Colman's conduct in this matter is inconsistent with his testimony. There does not appear to me to be any inconsistency. He tells you that his object was to save Joseph, and to hurt no one, and least of all the prisoner at the bar. He had probably told Mr. White the substance of what he heard at the prison. He had probably told him that Frank confirmed what Joseph had confessed. He was unwilling to be the instrument of harm to Frank. He therefore, at the request of Phippen Knapp, wrote a note to Mr. White, requesting him to consider Joseph as authority for the information he had received. He tells you that this is the only thing he has to regret, as it may seem to be an evasion, as he doubts whether it was entirely correct. If it was an evasion, if it was a deviation,

if it was an error, it was an error of mercy, an error of kindness,—an error that proves he had no hostility to the prisoner at the bar. It does not in the least vary his testimony or affect its correctness. Gentlemen, I look on the evidence of Mr. Colman as highly important; not as bringing into the cause new facts, but as confirming, in a very satisfactory manner, other evidence. It is incredible that he can be false, and that he is seeking the prisoner's life through false swearing. If he is true, it is incredible that the prisoner can be innocent.

Gentlemen, I have gone through with the evidence in this case, and have endeavored to state it plainly and fairly before you. I think there are conclusions to be drawn from it, the accuracy of which you cannot doubt. I think you cannot doubt that there was a conspiracy formed for the purpose of committing this murder, and who the conspirators were; that you cannot doubt that the Crowninshields and the Knapps were the parties in this conspiracy; that you cannot doubt that the prisoner at the bar knew that the murder was to be done on the night of the 6th of April; that you cannot doubt that the murderers of Captain White were the suspicious persons seen in and about Brown Street on that night; that you cannot doubt that Richard Crowninshield was the perpetrator of that crime; that you cannot doubt that the prisoner at the bar was in Brown Street on that night. If there, then it must be by agreement, to countenance, to aid, the perpetrator, and, if so, then he is guilty as principal.

Mr. Webster's Address to the Jury

Gentlemen, your whole concern should be to do your duty, and leave consequences to take care of themselves. You will receive the law from the court. Your verdict, it is true, may endanger the prisoner's life, but then it is to save other lives. If the prisoner's guilt has been shown and proved beyond all reasonable doubt, you will convict him. If such reasonable doubts of guilt still remain, you will acquit him. You are the judges of the whole case. You owe a duty to the public, as well as to the prisoner at the bar. You cannot presume to be wiser than the law. Your duty is a plain, straightforward one. Doubtless we would all judge him in mercy. Toward him, as an individual, the law inculcates no hostility; but toward him, if proved to be a murderer, the law, and the oaths you have taken, and public justice demand that you do your duty. With consciences satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from but the consciousness of duty disregarded. A sense of duty pursues us ever. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning, and dwell in the uttermost parts of the sea, duty performed or duty violated is still with us, for our happiness or our misery. If we say the darkness shall cover us, in the darkness, as in the light, our obligations are yet with us. We cannot escape their power, nor fly from their presence. They are with us in this life, will be with us at its close; and in that scene of inconceivable solemnity, which lies yet farther onward, we shall still

Classics of the Bar

find ourselves surrounded by the consciousness of duty, to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it.

As has been seen in the foregoing argument, Mr. Webster, in referring to the statement of defendant's counsel that defendant may have been in Brown Street from mere curiosity to see what had been done, said, "The very walls of a courthouse ought not to stand, the plowshare should run through the ground it stands on, where such an argument could find toleration." And yet this argument, so absurd in Mr. Webster's opinion, and which, on its face, would seem at least contrary to the probabilities, was based on the exact fact. It afterward appeared that John Francis Knapp was not in Brown Street for the purpose of rendering assistance to the assassin. It developed that Crowninshield, when he started to commit the murder, told Knapp to go home and go to bed; that Knapp did go home, and went to bed; that he afterward arose, secretly left his father's house and went to Brown Street to await the coming out of the assassin and to learn whether the deed was accomplished; and, if so, to hear the particulars. Thus, while the defendant was an accessory, he was not guilty as principal. But these facts did not clearly appear at the trial, and it would be unkind now to criticize the jury for their finding or Mr. Webster for his argument. After all, stranger things have happened in the administration of the law, and the writer has observed stranger verdicts announced in courts of justice. Perhaps many lawyers on the losing side have observed as much.

The defendant was convicted. Joseph J. Knapp, Jr.,

Mr. Webster's Address to the Jury

was then tried as an accessory before the fact and convicted. Both were executed. Joseph J. Knapp, Jr., who had made a full confession on the government's promise of pardon if he would be a witness for the State, when brought into court at his brother's trial and called to the witness stand, declined to testify. Thus his refusal to testify against his brother cost him his life.

Perhaps he cherished his brother's faith and trust more than life. Perhaps in the hour of despair, standing behind prison bars, he realized and repented that it was his hand that beckoned his brother from the path of right and that now, to swear his life away, was too great a burden for even a murderer to bear. Perhaps, in spite of all his sins, he felt that he could not prove false nor faithless in that crucial hour.

Aye, it may be that when the angels of virtue gathered for the last time around the dreary fireside of his lonely heart and softly drew away, one lingered yet awhile—loyal even unto the hour of death.

Senator Vest's Tribute to the Dog

SOME years ago, in one of the towns of northern Missouri, a citizen brought a damage suit for \$200 against a neighbor who had killed his dog. Senator George G. Vest appeared in the case as counsel for the plaintiff. The defendant was represented by Senator Francis M. Cockrell.

Senator Vest made the closing argument to the jury. He spoke but few words, and these in a low voice and with little gesture. He made no reference to the law, the evidence, or the merits of the case, but confined his remarks to an eloquent and most remarkable tribute to the dog.

The Eulogy

GENTLEMEN OF THE JURY: The best human friend a man has in the world may turn against him and become his enemy. His son or daughter that he has reared with loving care may prove ungrateful. Those who are nearest and dearest to us, those whom we trust with our happiness and our good name may become traitors to their



GEORGE G. VEST

Senator Vest's Tribute to the Dog

faith. The money that a man has he may lose. It flies away from him, perhaps, when he needs it most. A man's reputation may be sacrificed in a moment of ill-considered action. The people who are prone to fall on their knees to do us honor when success is with us may be the first to throw the stone of malice when failure settles its cloud upon our heads. The one absolutely unselfish friend that a man can have in this selfish world, the one that never deceives him, the one that never proves ungrateful and treacherous, is his dog.

A man's dog stands by him in prosperity and in poverty, in health and in sickness. He will sleep on the cold ground where the wintry wind blows and the snow drifts fiercely, if only he may be near his master's side. He will kiss the hand that has no food to offer. He will lick the wounds and sores that come in encounter with the roughness of the world. He guards the sleep of his pauper master as if he were a prince. When all other friends desert he remains. When riches take wings and reputation falls to pieces, he is as constant in his love as the sun in its journeys through the heavens. If fortune drives the master forth an outcast in the world, friendless and homeless, the faithful dog asks no higher privilege than that of accompanying, to guard against danger, to fight against his enemies, and when the last scene of all comes, and when death takes the master in its embrace and his body is laid away in the cold ground, no matter if all other friends pursue their way, there by the graveside

may the noble dog be found, his head between his paws, his eyes sad but open in alert watchfulness, faithful and true even in death.

The jury returned a verdict in favor of the plaintiff.

It is said that, although the suit was for only \$200, the verdict of the jury was for \$500, and that some of the jurors wanted to hang the defendant.

The Trial of George W. Cole

AS he stood talking with friends in one of the corridors of Stanwix Hall, in the city of Albany, N. Y., where, as a member, he was attending the New York State Constitutional Convention then in session, L. H. Hiscock, a prominent lawyer of Syracuse, was on January 4, 1867, suddenly shot down by Major-general George W. Cole. The ball from Cole's pistol pierced the brain of Hiscock and he died instantly. As he fell to the floor Cole exclaimed, "That man was my best friend, but he has ruined my simple, childlike wife."

Cole was indicted for murder, and his trial began on April 20, 1868. The defense was the usual defense in such cases—insanity at the time of the act or, as modern language would express it, a brainstorm.

On account of the prominence of both parties, as well as the peculiar facts leading up to the tragedy, the case excited much interest and attention throughout the country. Able and eloquent lawyers appeared on either side. The opening address to the jury in behalf of the defendant was made by the brilliant William J. Hadley of the Albany bar.

Opening Speech of Mr. Hadley

I REGARD myself as highly favored, gentlemen of the jury, in having been selected by the defendant in this indictment as one of his counsel, to represent, in part, his interests upon an occasion of so great a trial and solemnity as the present. And I deem it as both a privilege and a pleasure, that I am permitted, by the kind courtesy of my learned and much more efficient associates, to submit for your consideration the opening argument in his defense. And as he stands before you charged with the commission of a crime, the penalty of which, if guilty, is death; and your deliberations are to decide for him the solemn and momentous questions, whether he shall be restored (not to home, for home, alas, he has none); not to wife (for wife, though living, is dead to him as though the cold grave enclosed her once loved form), but whether he shall be restored to liberty, and to the companionship and affection of his loved children, and be permitted to endure the remainder of his wretched and heart-broken existence, until a merciful God shall relieve him from further suffering by calling his crushed and wounded spirit home; or whether he shall be given over by you to a speedy and ignominious death upon the gallows, and to the corruptions of the grave. I have thought it not inappropriate to the solemnity of the occasion to introduce this defense to your notice with a brief history of some of the an

The Trial of George W. Cole

tededents of the man upon whom you are called to sit in judgment; that you may know, and knowing, properly appreciate, what kind and manner of man this is upon whose life or death it has become your solemn duty to adjudicate. Although now appearing before you in bonds as a prisoner at the bar of this court, George W. Cole is, by the commission of the President of the United States, a Major-general of Volunteers, lately in the military service of the country; promoted to that high and distinguished rank, for meritorious services and distinguished gallantry in fighting the battles of the rebellion during the four long years of cruel and bloody war from which the country has so recently emerged.

Born at Lodi, in Seneca County, in this State, in the year 1827, he is now in the forty-first year of his age. Reared upon the farm owned and cultivated by his father, he remained at home until his seventeenth year, and not possessing the advantage of a wealthy parentage, his time was occupied by working on the farm during summer seasons and going to school winters and devoting such leisure time as could be spared from necessary labor to his mental culture and improvement. At the age of seventeen he left home for the purpose of entering a seminary of learning established at Lima, in Livingston County, with a view of preparing himself for college, and at the age of about twenty entered as a student in the University of Middletown, in the State of Connecticut, where he remained for about two years, and like so many of the self-made and

prominent men in this country, studying hard during the summers and supporting himself and paying the expense of his education by teaching school and studying during the winters, and college vacation. Leaving the University, he entered the Medical College at Geneva, and studied for about two years the profession of medicine and surgery, and graduated and received his diploma as a physician about the year 1850, studying when the college was not in session with Dr. Smith, a distinguished physician at Geneva.

Having now concluded his studies, he found an opening to commence the practice of his profession in the town of Trumansburg, in Tompkins County, and moved to that place in the spring or summer of 1851, where by his scientific attainments, his professional skill and gentlemanly deportment, he very shortly succeeded in establishing a large and successful practice. In the early fall of that year he became acquainted with Miss Mary Barto. She was the daughter of Judge H. D. Barto, a prominent and influential citizen in that section of the country, a distinguished lawyer by profession, but then living in the enjoyment of those ample means which a long life of industry, economy and integrity had enabled him to accumulate. Miss Barto was a young lady of great personal accomplishments; of refined manners; of a most chaste and polished address; and who, but for the foul wrong and great crime of the deceased, a crime and wrong which causes you to assemble here this day, would now be

The Trial of George W. Cole

one of the happiest and most honored ladies in the land.

Yes, she was good as she was fair,
None, none on earth above her;
As pure in thought as angels are;
To see her was to love her.

The acquaintance once formed, soon ripened into intimacy; from intimacy into affection; and with the approbation of her father and the friends of the family, Dr. Cole was married to Miss Barto, at Trumansburg, on the 10th day of September, 1851. It was a union of mutual affection. On the part of the defendant he worshipped this lady with a feeling of adoration scarcely less than idolatry; he loved her with all the affection of which the most ardent nature is capable; he lavished upon her all the treasures of his heart, and in the sight of God and man took upon his conscience the solemn vow that he would love, comfort, honor, and keep her in sickness and in health, and that forsaking all others he would cleave only unto her so long as they both should live. Little did he then anticipate that the pure, chaste girl he pressed to his heart with all the ardor of love and of youthful passion, could ever fall a victim to a base, adulterous lust, or become an object for the hand of scorn to point its slow and moving finger at.

But let me not anticipate. Shortly after the marriage, Dr. and Mrs. Cole commenced housekeeping and removed to Trumansburg for about a year, he contin-

uing the practice of his profession. From there they moved to Havana, Schuyler County, where he purchased a drug store, and engaged in that business. It may be interesting to you to know why he should quit a lucrative and honorable profession to engage in another department of business. The evidence in the case will furnish the answer to the inquiry. It will show the defendant to be a man of a peculiarly sensitive temperament, of a nervous disposition, and of most acute sensibilities, and he could not harden his nature to witness with indifference those scenes of suffering and distress which the good physician is so often called to minister to, and yet find himself unable to alleviate. To stand by the bedside of some dying parent; to witness the grief of children and friends as they stood around the death bed, and yet to be unable to furnish relief or to utter a word of consolation or of hope, so wrought upon the tender sensibilities of his nature, that the continuance of his practice became distasteful to him, and he sought relief by engaging in another pursuit which would spare him the necessity of so constantly witnessing scenes of suffering and distress. At Havana, he carried on a successful and prosperous business for about two years. While at Havana, and in the spring of 1853, there was born to him his first child, Fanny by name.

In 1854 or '55, Mrs. Cole and the child were both taken down with severe sickness, and attributing their indisposition to the malaria and unhealthiness of that locality, they concluded it best to sell out their busi-

The Trial of George W. Cole

ness, and having done so, returned to Trumansburg for a short period; and while staying at Trumansburg, their second child, Alice, now about twelve years of age, was born. In 1856, he purchased a farm in West Lodi, on the bank of the beautiful Seneca Lake. On this farm they remained until the month of April, 1857. Mrs. Cole having always lived in a populous village and being much accustomed to society, became dissatisfied with the retirement of a country life, and discontented to remain longer upon the farm, and having no object in life superior to that of gratifying and pleasing her, at her instigation he sold the farm, and shortly afterwards, and in the fall of 1857, they moved to the city of Syracuse. In the Spring of 1858 he purchased an interest of two-thirds in the lumber business of a Mr. Vassall, and in 1859 bought out Vassall's interest, and continued doing a prosperous and paying business until the first act of war was committed by the seceded States against the United States government. Scarcely had the smoke from the first rebel gun fired at Fort Sumter died away, scarcely had the ink become dry upon the President's proclamation calling for volunteers in defense of the imperilled life of the nation, before George W. Cole, impelled solely by the pure spirit of patriotism, enrolled his name as a private in the 12th N. Y. Volunteer Infantry, and mainly by his own efforts, and by the outlay of his own means, raised the first full company of volunteers that was raised in this State. Unanimously elected Captain of the company, and the

regiment being filled up, they marched from Syracuse amid the firing of cannon and the music of several bands, accompanied by the prayers and benedictions of thousands who assembled to witness their departure; and as they bade adieu to home, and wife, and children, each man's heart was nerved to thoughts of loftier resolution by the pledge then made, that while absent in the field, the loved ones left behind should be the sacred wards of a grateful country, and that if the heroes of the nation fell in the path of duty, that country would adopt, cherish, support and protect as its own, the widowed mourner and orphan children of those who yielded up their lives that it might live. Prominent among those by whom this pledge was made was L. Harris Hiscock. With what fidelity he kept that pledge, the sequel will disclose.

It is not essential to my purpose that I should attempt to lay before you even the most condensed sketch of the military career of George W. Cole. Time would utterly fail me should I attempt to do so. The briefest narrative would consume the space of an entire day. . . .

When after time shall scan the roll of those who have made for themselves an imperishable name; when the pen of the historian shall set in order the toils, the sufferings, the indomitable courage, the unfaltering heroism and the unwavering ardor of those who fought with the brave Army of the Potomac, from that dark and gloomy day when the spreading ensign of the nation's glory was lowered from the ramparts of Fort Sumter, until

The Trial of George W. Cole

that bright and balmy day, when four years later that same flag was gloriously reinstated in its place, and the Stars and Stripes were fluttered to the breeze amid the booming of rejoicing cannon, the strains of merry music and the glad acclamations of the ten thousand there assembled to witness the Sumter celebration, the name of George W. Cole shall be found gloriously ascending the current of the stream of Time, and be transmitted bright and unsullied to the gratitude of coming ages. Be the issue of this day's trial what it may, to the justice of posterity I am content to leave his vindication. It is only to such events in his career as will be found to have a direct bearing upon the questions *you* have got to decide, that I propose to make the briefest possible allusion.

Passing uninjured through the first bloody battle of Bull Run, where a glorious victory gained by raw and undisciplined troops, was changed into an inglorious route by the incompetency of those in command, he was shortly afterwards transferred to and commissioned by Governor Morgan as Captain of the 3rd New York Cavalry. While holding this position he received a severe and dangerous injury, which it is necessary to bring to your notice. In 1862, while charging on rebel pickets at full speed, his horse, a large, heavy animal, suddenly fell, and being unable to disengage himself from the saddle, owing to a previous wound in the thigh, rolled over him, compressing the breast bone inwardly to such an extent as to prevent respiration almost entirely for some moments,

and for a long time partially. . . . You will readily understand how great the violence and shock must have been to have produced so serious a result.

While in this condition, he was tied on to his horse, compelled to ride in the saddle all night and the next day, exposed to a storm, unsheltered all the next night, and not able to reach the hospital until the third day following the injury. Ever since that time he has suffered from great disarrangement of the system affecting the lungs and vital organs. . . . This injury it will be well for you to bear in mind. Its extent and the effect upon the physical and mental constitution of the man will be hereafter described to you.

In the fall of 1862, Captain Cole made what is known in the history of the war as the great Kingston raid. Pardon me, gentlemen, if in justice to a brave and persecuted man, I so far trespass upon your patience as to ask attention for a moment to the manner in which the man whom you are trying for his life, was regarded in those days which tried men's souls.

For this and other gallant achievements he was commissioned by Governor Seymour, Major of the 3rd New York Cavalry. He was subsequently appointed on General Butler's staff as Inspector of Cavalry. At his own expense and without a dollar's cost to the government, he raised an entire regiment of colored cavalry, numbering some one thousand and four hundred men, at a time when the government

The Trial of George W. Cole

was clamoring for troops, drafting was going on at the North, and States and counties were glad to secure men by bounties of \$1,000 a head, and to his imperishable honor let it be known, that having the opportunity to have realized \$100,000 if he would transfer these men to the quota of an eastern State, he refused the offer, never receiving one dollar for organizing the regiment, and he is to-day, by the expenses then incurred, a poorer man than when in April, 1861, he subscribed his name to the muster roll as a private soldier in the service of his country. Commissioned as Colonel of this regiment, he was subsequently made Brigadier general and afterwards promoted Major general. And so highly esteemed were his services, that after the surrender, the government, refusing to muster him out of service or to disband his men, ordered him to City Point, there to organize a brigade, and from there sent him to Texas to watch the operations then in progress on the Mexican border; kept him there until the danger of collision between this government and that of France had passed over, and finally mustered him out of service in February or March, 1866.

Retired from the perils and hardships to which he had been so long subjected, I need not attempt to picture to you with what joyful anticipations he looked forward to a happy reunion with his wife and children. After an absence of five years from home; exposed daily to danger and death; the pride

of his companions, with a name and reputation of which any man might feel justly proud, he looked forward to the endearments of his home with an impatience which admitted of no delay. His hopes, his joys, his ambitions, all centered there. Amid every variety of danger and privation, Hope had pointed to his wife and children. Next to the pure spirit of patriotism which animated him, it was for them he had toiled and suffered, and exposed himself to death in every form of danger. In camp, and on the field; by day and by night; the loved images of his wife and children had been ever present to his memory; his parental and conjugal affections had been the solace of his life; and with his country saved, and his duty as a gallant soldier well done, he was now to return again and enjoy those comforts in the bosom of his family, which he would not barter one moment for all the wealth and honors this world could bestow. Vain, cruel delusion! He did return, but scarcely had the congratulations of his friends and the warm welcome of his neighbors died away, before he discovered that some dark, portentous cloud was hovering between him and the happiness he had so joyfully anticipated. The wife of his bosom, upon whom he had lavished all the wealth of his affections, had become a changed woman. She whom he had left so kind, so full of affection, greeted his return with cold indifference; thoughts of horror and remorse seemed to occupy her mind; her former affection for her husband

The Trial of George W. Cole

seemed to be transformed into a feeling of settled aversion; her lips gave no utterance of her former love; she had become cold and unimpassioned as the marble; disgust and alienation toward her husband seemed to possess her, and to such an extent did her aversion proceed, that she denied him those marital privileges, which, as her husband, were his of right to demand.

What had caused this change? Ah, gentlemen, the serpent had entered into the paradise of his happiness, and the woman had fallen. A libidinous scoundrel had polluted her being; had stolen away her affections, and by the magical sorcery of the adulterer's spell, had transformed her former love into settled hatred and aversion. But not at that time did this defendant know or suspect the full extent of the woe and calamity that had fallen upon him and his household. The discovery of her infidelity and the detection of the guilty wretch who had stolen his wife's purity, and his happiness, were yet in reserve for the future.

So marked a change in her from love to aversion could not take place without leading to comment and remonstrance from him. To his kind and loving expostulations as to her conduct; to his affectionate entreaties to be made the confidant of her sorrow, that he might share and alleviate her grief, she responded by attributing it to false causes—indisposition, ill-health, lowness of spirits, melancholy, hypochondria. From his confiding disposition and

the exceeding love he bore her, he trusted to her truthfulness. It was impossible that any suspicion of her fidelity could diminish his confidence in her purity. She, the mother of his children, so modest, so reserved, so dignified, so childlike, formerly so good, how was it possible he would suspect her of yielding to another's brutal and licentious lust? No! the suspicion was impossible. Believing that sickness and low spirits were the fiends that assailed his domestic peace, he studied how he might win her back to cheerfulness and affection. He accommodated himself to all the variegated phases in which her unhappy temper manifested itself; he redoubled his tenderness toward her; he humored her waywardness. In a thousand different ways he studied how best to please her. To divert her melancholy he took her to places of amusement. Vain, useless effort! The spell of the serpent was upon her; the fascinations of the seducer had entered her soul; the foul tempter of her innocence with a villain's wile and a villain's wickedness was still in hot pursuit of the victim of his lust.

Dispirited and discouraged at the failure to regain his wife's affection; his vision of happiness dissipated; liable to and constantly anticipating sudden death as a consequence of the injury to the bowels to which allusion has been heretofore made, his health and constitution shattered, a marked and perceptible change came over his temperament and disposition. He, too, became an altered man. He

The Trial of George W. Cole

became sad, dejected, pensive and abstracted in his thoughts. He fell into the deepest despair. Instead of the gay and sprightly disposition he had always manifested, a settled melancholy seized possession of him. His former friends and companions observing his altered demeanor, knowing his idolatry for his wife and children, and not knowing of any domestic trouble to agitate his mind, attributed his altered appearance and conduct to his connection with the army and to the scenes through which he had passed during the war. It is a painful circumstance in connection with the foul wrong which the evidence will reveal to you, that this defendant and the deceased L. Harris Hiscock, were and had been, for a length of time previous to his death, warm personal friends. Before a man can deliberately debauch the wife of the friend who confides in him, he must have become utterly abandoned to every principle of virtue and be lost to every sentiment of manly honor. It was Mr. Hiscock who was recommended by this defendant to Mrs. Cole as her confidential and professional adviser in such matters as she might need counsel during his absence in the army. And it aggravates the wickedness of his conduct that in availing himself of the opportunities for seduction he not only violated the confidences of friendship, but trampled under foot the sanctity of professional relations.

Having no pleasure or affections beyond the

sphere of his domestic life, never absent from home except upon necessary business, finding what little of solace was left him in the company and amusements of his children—about the spring of 1867 General Cole received an appointment under the government as special agent of the Customs. The duties of the office requiring much of his time to be spent in the city of New York, he had made arrangements with a Mr. Tillotson, of Brooklyn, a relative of Mrs. Cole, to receive his wife as a boarder, hoping by this arrangement to retain his wife's company, and at the same time, by change of scene and association, and by indulging in the innocent amusements of metropolitan life, to divert her mind from the morbid feelings and thoughts preying upon it. And I am now about to relate to you the events which occurred on the ten days or two weeks immediately preceding the tragedy at Stanwix Hall. About the 27th or 28th of May, he met Mr. Hiscock in the street at Syracuse. Stopping to converse, Hiscock abruptly inquired: "When are you going to New York, General?" (He had made the same inquiry of the General on several previous occasions.) Something in the manner of the inquiry and of the man who made it aroused his attention. Why is this man always so anxious to know when I am going away from home? at once occurred to him. Looking at Hiscock suddenly and sternly in the face, he observed his countenance apparently fall under his gaze, and without waiting for any reply,

The Trial of George W. Cole

the guilty man turned away and shrank from the sight of the abused friend whose rights he had outraged. He watched him in astonishment. At once suspecting that there was something wrong; what the nature of the wrong was he could not imagine. The inquiry kept ringing at his heart: Why does this man want to know when I am going to be absent from home? Still no suspicion occurred as to his wife's fidelity. He returned home perplexed and agitated. The first person he saw there was Mrs. Mary Cuyler. Now, mark what took place. Mrs. Cuyler was a cousin of General Cole, had been brought up by him and had lived in Mr. Cole's family during the General's absence in the army, and had observed much that had occurred.

Seeing her he addressed to her, very naturally, the inquiry, "What's the matter with Hiscock; he looks, to me, as guilty as a dog?" Thrown off her guard by the abruptness of the inquiry; suspecting that the General had learned or heard something, but not knowing what, Mrs. Cuyler somewhat evasively replied, "Yes, Doctor, there has been a good deal of talk about *Mrs. Cole's flirtations with Mr. Hiscock.*" Stunned and horrified at the suggestion, he exclaimed, "Mrs. Cole's flirtation! what do you mean?" Perceiving now, with a woman's quick perception, that he was still in ignorance of any misconduct of his wife, determined not to be the first person to disclose the fatal secret that was to blast his happiness and

carry desolation to a once happy household, Mrs. Cuyler utterly refused to say anything further upon the subject, and to his entreaties would only reply, "You write to Montgomery Pelton and he can give you some information if he sees fit." With this scanty information he was compelled to go to New York. I leave you to imagine, if you can, what must have been the feelings of such a husband at the discovery that his wife (and such a wife as he had fondly pictured her) could have been guilty of such imprudence of conduct as to make her name the subject of remark or scandal; for not even yet did he know the full extent of the heavy calamity which had fallen upon him. From New York he wrote to Mr. Pelton and awaited his reply, in a condition of great mental suspense and torture. Some evidence will be given you as to his mental sufferings during these few days. I cannot trust myself with the attempt at their description.

The fatal reply reached him on Saturday, June 1, and from it he first realized the suspicions that by the guilty conduct of this man Hiscock he was not only forever deprived of the comfort and society of the wife he so adored, that not only were his innocent children robbed of their mother's pure affection, but that he himself was placed in a situation too dreadful, too horrible to be endured! It was a condition to overwhelm the mind of any man. It was a torture that no words can communicate, no language can depict to others. What should he do? where could

The Trial of George W. Cole

he go? what would become of his little children, thus cruelly bereft of a mother's fostering care? how should he shelter those little lambs from the shame and sorrows thus made their inheritance? whither should he fly and forget the burning, damning disgrace brought upon his name and household? He, the gallant soldier who had stood so often in the very jaws of death and faced it at the cannon's mouth, how could he bear this great disgrace? His dishonor would speedily become known not only to the army in which he had served with such proud distinction, but to the whole world. Not a tent, not a hut in the land in which his once honored name would not be bandied about—a jest in the mouth of profligate poltroons—pronounced with wasted pity by the compassionate brave. He who commanded heroes with pride amid the fiercest din of the battle's roar, never had need to be ashamed as he looked upon his colors and took the foremost place in the line of battle; but no wretch ever led to execution for desertion or cowardice ever shrank from the sun or from the sight of human faces with more shame and horror than did he when after reading that dreadful revelation he gathered from it the fact that she he loved so tenderly was sunk in sin and shame and steeped forevermore in uttermost pollution. But he would go once more to his home; he would confront his once innocent and still loved wife, face to face; he would hear from her own lips the sad, sickening story, and no matter how indiscreet or imprudent she may have been, he would bless God

for the imprudence and still forgive her if she had but stayed her feet on the brink of the precipice before taking the last leap into the fathomless abyss. Poor, deluded man! your last hope is shortly to be disappointed, and you have soon to learn that the once honored name of Mary Barto Cole had already become a thing of scorn for the ribald tongue of any libidinous scoundrel in Onondaga County, to fling its filthy, vulgar jest at.

Returning to his desolated home by way of the Hudson River Railroad, his strange and wild appearance and conduct attracted the attention of a gentleman connected with the naval service, and with whom General Cole had formerly had a slight personal acquaintance. You will hear from that gentleman an account of General Cole's mental condition, so far as the witness is capable of describing it. Visions of suicide then haunted his brain. He thought he would throw himself from the platform while the cars were in motion; but if he did, perhaps they would say of him that he had fallen from the cars while drunk. He must write a letter to his wife and communicate to her his knowledge of her guilt; he must send one final parting benediction to the children he loved so tenderly. He would then jump from the cars and find peace, and be at rest beneath the quiet waters as they crossed the Albany Bridge. But, oh God! what would become of his poor children thus doubly bereft? No, he would see his poor childlike wife; perhaps she might not be so very, *very* guilty.

The Trial of George W. Cole

Such were some of the conflicting thoughts which distracted this poor heart-broken man during that fearful night; the interview with his wife was had and ended. It confirmed his worst fears; her overburdened conscience could no longer retain its guilty secret. On the morning of Sunday the 2nd day of June last, he received from her a statement of her fall; of her adulterous guilt and of his own disgrace. Taking advantage of his absence, calculating probably his own safety by the chances that this defendant would never outlive the dangers to which his courage and ambition daily exposed his life, the cowardly adulterer had invaded his household, stolen his wife's affections, robbed her of her purity and polluted her person. It is impossible to describe the agony and distress of mind into which he was thrown by this communication. There are some excesses of grief so profound, so overwhelming, one knows not how to deal with them. So was it in this case. The day was spent in the privacy of his own room, in the company of his fallen and degraded wife, in tears and groans and unutterable sorrow. To whom could he look for relief? Alas! there was none who could mitigate his great sorrow. To whom could he look for consolation? Not to his children; for their once joyous countenances, now toned to sadness, only intensified the agony of his reflection. His hopes of happiness forever blasted; his house a desert; his children motherless, not from the orphanage that springs from death, but from the remorseless cruelty of maternal guilt;

his brain on fire, while every fiend of hell seemed let loose upon his heart; is it to be wondered at that he was unable to resist the stream of his great agony, or that reason was for a time hurled from her throne, and his mind became shattered to ruin? Is there a right-minded moral man in this community who can listen to such affliction without feeling overwhelmed with indignation at the guilty perpetrator of so foul a wrong? Is there a husband, a father, or a brother, within the sound of my voice, having but one dear darling of his heart's affections, in whose sympathies sorrow has found its charm, whose love has alleviated his misfortunes and guided him through danger and darkness, seeing her become the prostitute of a base libertine's lust, whose heart does not instinctively re-echo the precept of Almighty God, that "the man that committeth adultery with his neighbor's wife, the adulterer shall surely be put to death"? The thief who steals your property may have want, and poverty, and hunger to palliate his crime, yet he is nevertheless the subject of criminal punishment by the law of society; but the thief who deliberately robs you of your domestic joys, knows that he may steal in security, for no punishment is provided by the law of society against his crime; and unless there is courage at the heart, and nerve in the right arm of the injured husband to redress his own wrongs, he goes unwhipped of justice, to repeat the same foul transgression in your family or mine, at the first convenient opportunity.

The Trial of George W. Cole

The thief who invades your dwelling to steal your money is a felon, and expiates his crime behind bolts and bars in a felon's cell. But the thief who enters your dwelling to rob you of the priceless jewel of your wife's virtue, mocks with impunity at the wreck and ruin he has caused, and is, perchance, elected member of a Constitutional Convention, or becomes the legislator of a State, to guard, with a watchful, jealous eye, against the passage of any law that shall check him in his amatory pursuit after other men's wives. He may add to his lists of conquests the name of *my* wife or of *yours*; he may record upon his tablets my name or yours as the cuckold husband whose wife he has made the prostitute of his lust; he may boast of his conquests to fashionable companions as dirty and contemptible as himself; he may laugh at the dejected air and emaciated countenance which his triumph causes, and he laughs in security, for his cowardly heart fancies that while there is no law to protect the injured husband, abundance of musty law can be exhumed from the records of barbarous antiquity to punish him if he protects himself. Talk about the duty of patriotism in defense of a man's country! What object has any man to defend his country if he is to be hung for defending his own family?

Let us resume now, gentlemen, the narrative of events in the order of their occurrence. Greatly fallen and degraded as the confession represented her, yet the fond heart of the ruined husband still strove to

regard her as more sinned against than sinning. He knew what wiles, what artifices, what deceptions must have been employed before the seducer could have triumphed over the virtue of his pure, chaste, and childlike wife. She had a brother; perhaps he could suggest some palliative for this intolerable anguish. He must see Henry; he determined to take his advice and be guided by his counsels. A dispatch was accordingly sent to Mr. Henry D. Barto, Mrs. Cole's brother, begging him, for God's sake, to come to that house of desolation and woe. In due time, the answer came that Mr. Barto was in New York or Albany; and I call your attention to this dispatch to show you that General Cole's object in coming to Albany was not to meet Hiscock, but to see Mr. Barto. I have barely alluded, and in the most general way, to the mental condition of the accused during portions of the day on Sunday. Sunday night, Monday and Monday night intervened, but they brought no diminution to his mental excitement and agony; the longer he reflected upon his disgraced, miserable condition, the more intolerable it became; the longer he thought of it, the more the thought maddened his brain. The days passed without food; the nights without sleep. The desire to see and consult with Mr. Barto became painfully oppressive, and finding it impossible longer to endure this strain upon his nervous system, after a variety of conflicting and agitating resolutions, he concluded that on Tuesday morning he would take Mrs. Cole to her relatives at

The Trial of George W. Cole

Brooklyn, stopping at Albany to see Mr. Barto, if he should happen to be found here, or in New York, if there. This was the sole reason of their coming to or stopping at this place. So intense was the agony of both the General and Mrs. Cole, that under the apprehension that one or both would commit suicide if left alone, Mrs. Cuyler insisted that her husband should accompany them on their wretched journey.

In sorrow and shame they embraced their weeping children, turning their backs upon their once happy, now desolated home. Anxious to escape public observation, in the dread that he could read the knowledge of his disgrace in the countenance of every passing acquaintance, they reached the cars through back and secluded streets, and were carried from Syracuse by the eleven o'clock train. You will hear from Mr. Cuyler what occurred during that never to be forgotten journey. Arriving at Albany, Mrs. Cole and Mr. Cuyler left the cars on the side from which the passengers usually land, while General Cole, haunted and distressed by the delusion that his disgrace was known and read of all men, and unable to endure their gaze of pity or of scorn, hoped to escape public observation by landing on the other side, and by a more retired route shortly afterwards rejoined them at the Delavan House.

The long desired interview with Mr. Barto took place and soon ended. In the course of it General Cole first learned that Mr. Hiscock was then in Albany. Of that interview I do not like to trust my-

self to speak, but in justice to my unfortunate client I cannot forbear the remark that had there been any warm manifestation of brotherly regard, had there been any judicious sympathy with the crushed and bruised spirit of the sorely afflicted man, the unhappy tragedy which forms the subject of this day's investigation might have been averted, and the court have been spared the solemn duty in which it is now engaged. The interview over, his frenzied mind possessed itself of the idea that he must see Hiscock. It was not malice, it was not mischief which prompted the desire. In his frenzy he believed that he was calm and that he could control the outburst of his feelings. He had struggled fearfully to master the instincts of his nature and intended to struggle to the end. He felt that Hiscock had abased and degraded him—he would make Hiscock abase and degrade himself; fortified with his wife's confession he intended to charge him with the perfidy of his conduct; abjectly and at his feet Hiscock should confess his crime and in humility and self-abasement should supplicate his forgiveness. His pride and self-respect thus mortified, they would stand in that respect upon a common level. This done, he would leave the guilty man to the retribution of a just God, and his evil conscience, and in the retreat of some solitude yet to be discovered, this broken-hearted man would bear the fate so cruelly imposed upon him in shame and submission.

Still haunted with the idea that every eye could see in his sad and dejected countenance the story of his

The Trial of George W. Cole

wife's dishonor and his own disgrace, he entered Stanwix Hall, by the side entrance from Maiden Lane, as being more likely to escape the observation he so much dreaded. It was his intention to have stepped up to the counter, have obtained an inspection of the hotel register, and thus learning the number of his room, to have proceeded to it and have had the interview in private. As he approached the office, the false, deceitful friend who had betrayed him to his ruin, suddenly and unexpectedly appeared in his path. There stood the man who had seduced his wife! The tearful countenance of his sad and dejected wife; the weeping faces of his motherless children; the memory of his desolated home and departed joys all flashed upon a brain surcharged to madness. Overpowered by the violence of his emotions; unable to reason or reflect; deprived by the frenzy of the moment of all power to control his own will or judgment; by the confusion of his mind rendered wholly unconscious of the nature of the act he was committing, the hand, unaided by the will of George W. Cole, discharged the fatal pistol, and there fell the lifeless corpse of the adulterer at the feet of the avenger whose marital rights he had invaded, whose heart and home he had crushed and blighted, and whose reason he had shattered; and all this suffering and misery occasioned in order that his unholy lust might revel in a momentary gratification. Unconsciously the deed is done; done in a public place; in the presence of a score of witnesses. The mourning perpetrator makes no attempt to elude the claims

of justice. Sadly and submissively he resigns himself to whatever suffering and sorrow is yet in store for him; and conscious of the rectitude of his own heart and sustained by the approval of a good conscience, he can appeal to that God who ordained and sanctified the marriage relation and say meekly, but without trembling, "Not my will, but thine be done."

And now, gentlemen, the sin of the adulterer has wrought its perfect work and has brought forth death—the accustomed product. Experience teaches us that its usual culmination is in the death of the outraged husband before discovery. What it would have led to in this case, but for its discovery, is not left altogether to conjecture. The voices of instinct and of nature tell us that the man who will deliberately seduce another man's wife must do it at the peril of his life if discovery takes place. When the man of pleasure deliberately and coolly plots the seduction of your wife or of mine, he knows that he takes his life in his right hand to be offered up as the penalty of his guilt if detection takes place. When L. Harris Hiscock first cast his lustful gaze upon the person of Mary Barto Cole, and resolved to add her name to the list of others who had already fallen as the victims of his lust, he knew then as well as the world knows now, that if George W. Cole made the discovery of his guilt, this broad continent was not wide enough to shield him from the frenzy his own guilt created. In his double character of legislator and lawyer he knew that the right to redress these wrongs for which society

The Trial of George W. Cole

fails to provide any remedy, was founded in the law of nature; and that when the individual cannot resort for protection to the law of society, that law, with equal propriety and justice considers him as still under the protection of the law of nature. He knew that the fabric of society was built upon that instinct of the human heart which ever impels the wronged husband to vindicate the sanctity of the marriage bed; he knew that the impulse which prompts the wronged husband to slay the seducer of his wife, or the afflicted father to slay the seducer of his child was implanted in the breast of every living man by the hand of God Himself; and knowing the character, disposition and temperament of this defendant, he knew that George W. Cole could no more resist this instinct of his nature, than he could change the stars in their courses, or arrest the whirlwind in its wrath.

And now, gentlemen, in view of all this misery and desolation, caused and originated by L. Harris Hiscock for the momentary gratification of his unhallowed lust, the question is to be submitted to you as husbands, as fathers, as moral-minded men, to decide what was the character and nature of the act which George W. Cole committed, when with reason temporarily dethroned, he took the life of this destroyer of his domestic peace. On the part of the distinguished gentlemen who represent the prosecution, both in its public and private interests, that act is and will be denounced as an act of wilful, deliberate and premeditated murder. Without designing to impute im-

proper motives to anyone, it is at least a matter of regret that the conduct of this prosecution was not confined to the properly constituted law officers of the State, whose professional zeal is, or at least is supposed to be, somewhat restrained by the obligations of official responsibility. It is always unfortunate when the zeal of those charged with the inquisition for blood owes its inspiration to considerations of pecuniary gain, or where the effort to send a man to the gallows is graduated by the liberality of the counsel fee received, to produce that result. However calm, dispassionate and impartial, private counsel may suppose themselves to be, yet we cannot forget, it was the "thirty pieces of silver" which induced the betrayal of innocent blood, nor overlook the fact, that when the efforts and eloquence of the advocates are purchased and paid for by private funds, there is always danger that these efforts and that eloquence so bought and paid for, may represent more effectually the views, wishes and private feelings of their employers and clients rather than aid in that calm and dispassionate inquiry which has no other object than the discovery of truth.

Not that the distinguished gentlemen who represent the private interest in this prosecution are influenced by considerations one whit more mercenary than those which actuate the counsel for the defense; but the difference between us is this: We stand here to defend the living man; they stand there hired and paid to hound him on to the gallows if they can. We ask you to

The Trial of George W. Cole

look at this tragedy in the light of all its surroundings; they are sent here to labor to suppress that light and to compel you to arrive at truth in the midst of darkness. Selected from the bright array of learning and talent which adorn the bar of this State, for those commanding qualities of learning and of eloquence which have won for them professional fame upon many a hard-fought field of intellectual contest, they are sent here to-day to persuade you, if they can, that the act of the frenzied husband, slaying the man who desolated his home and polluted his wife, is of the same grade of criminal enormity as the act of the thief who murders in order to pilfer; and that there is no distinction in guilt between the man who slays in order to *commit* a crime and the man who slays in order to *prevent* one, that crime being the continuance of an adulterous intercourse with his own wife. They are employed and sent here to represent this defendant as a blood-stained murderer, moving to his work with cool premeditation, and with a wicked, depraved and malignant spirit, and only now *pretending* to a mental derangement at the moment of the act, in order to constitute an exemption from criminal responsibility.

To us he appears as the pure patriot; the gallant soldier; the loving husband; the fond father; the good citizen; the refined and polished gentleman, suffering under the visitation of the darkest calamity that can ever oppress or overwhelm the human heart. The issue presented is a plain and simple one. I shall not seek to furnish any middle ground on which to stand.

I accept the issue. I may be thought rash to jeopardize the life of my client when I prefer to trust the case, either as one wholly excusable by the law and the evidence, or as one of murder in the first degree. I claim that it is either excusable homicide or murder; I claim that it is not murder, but that it is excusable. In taking this view, let me do the learned and experienced gentlemen with whom I have the honor to be associated the justice of remarking that they are not in any manner responsible for my view of this case. The view which I take of it is my own, and I alone am responsible for it.

Others may think it would be a wiser policy to attempt to bring this homicide within one of the lower degrees of manslaughter, and punishable by imprisonment in the State prison for a term of years. But on behalf of my client, I say, with great respect, I want no compromise verdict. I denounce the false humanity which would purchase the life of an innocent man, at the costly sacrifice of his liberty for years; which would bid him live, but at the sacrifice of all that makes life worth living for; which would rescue him from death, only to inflict another punishment more dreadful than the agony of dissolution. No, gentlemen, I repeat that I want no compromise verdict. If, upon the evidence to be submitted to you, you can have the heart to pronounce this defendant a murderer, be it so. It is upon your responsibilities to God, to your consciences, and to him, that you will so decide. It is at your hands that requisition will be made

The Trial of George W. Cole

for his blood on the day of the last grand assize. He has suffered much already, but he can suffer more if it be your good pleasure so to ordain. He has faced death at the cannon's mouth; he can look upon it without trembling if it comes upon the gallows. It may be that his heart will quiver, and his cheek may blanch, at what the brave soldier regards as the disgrace of such an end, but it will be with a heart and conscience as free from all feeling of self-condemnation as the jury who may pronounce the verdict, or the judge who, in obedience to it, shall sentence him to die.

I shall not, therefore, trouble you with any inquiry as to what constitutes murder in the first and second degree, nor be led into any discussion as to the different degrees of homicide. On the letter and the spirit, the majestic reason of the law, of both God and man, I take my stand, and deny that there is any stain of guilt, either upon the heart or the hand of George W. Cole. It is true that the hand of George W. Cole shot down L. Harris Hiscock; but the wrongful act that deprived him of all power of self-control, and caused that hand to act involuntarily, comes here also, and asserts its supremacy over every heart. If it be true, that it is the reason of man which makes him accountable for his actions, then it cannot but be true, that the deprivation of that reason, at the moment the act is done, acquits him of criminal intent.

We see and recognize in all its terrible ghastliness, that on a lovely summer's evening, a prominent and

influential citizen, a legislator, and a lawyer, was suddenly stricken out of existence; but with the act we hear the wailing cry, "That man was my best friend, but he has ruined my simple, childlike wife," and we know that that cry is the utterance of a broken heart. The act for which he is now on trial for his life, and the cause which led to it are so bound and linked together by the same chain of testimony that they cannot be separated. The avowal of the wrong which had maddened his brain was made in the presence of the same spectators who witnessed the pistol shot; it ascended to heaven as the agonizing cry of an oppressed and burdened spirit, and it is here to-day appealing, in all its sadness, to the heart of every husband and father in the land.

Seeing the deceased thus publicly stricken down, hearing at the same moment the cause which led to the commission of the act publicly proclaimed, we have the right to hope that it will be the anxious desire of every juror on this panel to investigate in every direction for the truth or falsehood of the alleged cause. It will be the effort on the part of the counsel for the defense, to open the inquiry as broadly as possible for your investigation. We anticipate that the effort on the part of the private counsel for the prosecution will be to limit the inquiry within the narrowest possible space. That is what they are sent here for—to suppress and shut out truth. We shall attempt to lay before you the saddest picture of crime, of lust, of seduction, of betrayed friendship, of a desecrated home

The Trial of George W. Cole

and of household ruin, that the eye of man has ever yet rested upon. Our learned opponents dare not, if they can prevent it, let you inspect the perfidious and heartless traits of character in the deceased, which, if received, the evidence in this case will disclose.

Consider now, if you please, the principle upon which the law justifies and exempts from punishment the husband who, seeing another man in the act of adultery with his wife, kills the adulterer in the act. The law extenuates the killing in condescension to the known infirmities of flesh and blood. It recognizes the fact that this criminal intercourse is the very highest indignity which one man can inflict upon another, and that its natural and unvarying effect is to produce such a tumult of the passions as to stifle the voice of reason. It is not the mere fact of seeing, but it is the knowledge, no matter how obtained, that the adulterous act had been committed, which excites the tumult of the passions.

In whatever way that knowledge is acquired, whether by coming suddenly upon and surprising the parties in their guilty embraces, or by information suddenly obtained, the effect upon the mental emotions is precisely the same. It is not the mere fact of seeing the guilty pair in the actual coition, but it is the transport of passion created by the knowledge that the fact exists that justifies the taking of human life; and the frenzy produced is equally great whether that knowledge is acquired by the sense of sight; by hearing it from others, who did see it; by the knowledge of

Classics of the Bar

circumstances leaving no reasonable doubt of its commission, or by the admission or confessions of the guilty parties or either of them. In whatever mode the knowledge is acquired the frenzy produced is the same. Will it be pretended that there was in this case sufficient cooling time for passion to subside, and reason to resume its sway? Although the adulterous intercourse commenced in the year 1864, and continued down to the time of Hiscock's death; although it appears now, many eyes had been open to the guilt of the false wife, and her infamous destroyer; yet who was there ever to break the faith of the then confiding husband in his wife's integrity? Who is there to ever volunteer to tell the outraged husband of the deadly blight which blasts forever his hopes, his happiness and the manhood of his life?

Where is the man or woman that would ever voluntarily become the bearer of such black and damning tidings to a husband's ears? The evidence will satisfy you that General Cole's absence in the army was made the occasion of this crime, and your own good sense will teach you that after his return home, the infamous secret would be more carefully guarded as to him than to all the world besides. Not until that memorable interview with Mrs. Cuyler, about a week previous to the homicide, had he any cause to distrust his wife, and, then, of nothing more than frivolity or levity of conduct. Not until Saturday, the first day of June, 1867, was it that he received Mr. Pelton's letter, which caused him to suspect for the first time,

The Trial of George W. Cole

that his wife had been guilty of *criminal misconduct*. It was not until that fearful meeting on the morning of Sunday, the second day of June, that those suspicions were confirmed into realities, and the fallen woman avowed her shame to her wretched husband, fixing the date of its commencement, and revealed then, in disgusting detail, only so much of her subsequent infidelity as she saw fit to disclose; and this knowledge was communicated in little more than *two days* before the homicide, *and this defendant saw Hiscock for the first time after this knowledge on the evening that he slew him*. It is utterly idle, then, to talk about there being time for passion to cool or for reason to resume its sway.

Talk not about its being the duty of an outraged husband and father to forget a wrong of this deadly character. He cannot forget it if he would. His desolated home; his discarded wife; his orphaned children; his disappointed hopes; his disgraced manhood; the vacant chair at his fireside; these are the stern practical realities of his daily life, and by no effort of his will can he banish these thoughts. His overburdened brain must think or cease to beat. Thought has become his master; the more he thinks the more intolerable his thoughts become; and thought is madness. There was no cooling time and there could be none within the compass of a lifetime. As often as memory recalled the irreparable wrong, the frenzy of his excitement would be rekindled in all its original and irrepressible fury. The more he contemplated the

inconstancy of his wife, the more his reflections must craze and madden him. As husbands, as fathers, as brothers, as men, you cannot but know with what affections the human mind is endowed. Shame, anger and grief have their abiding place in the human breast. It is for you to say how great must have been their influence on this defendant under the fearful provocation he received. Amid the tumult of such emotions it was not possible that the voice of reason could exert its sway. Where, then, was the free agency of this defendant? Where his powers of controlling his will? Where that deliberation of intent, without which no crime can be committed?

Let any man do to any of you a grievous, irreparable injury, and though years should roll around and in the lapse of time you should have partially forgotten the occurrence, yet let the perpetrator of the wrong appear suddenly before you, and the first sight of him will arouse your feelings of indignation, of anger, or grief, not only in all their original force, but with a tenfold and irrepressible fury. Your experience as men, your own innate feelings will teach you that this is a universal truth, and its recognition will better qualify you to determine the question. What must have been the frenzy of General Cole when he encountered the deceased, seeing him within three days after his wife's pollution was first made known to him! If you recognize the fact that an individual can, under any possible circumstances, ever be thrown back upon his own natural instincts, this is that case.

The Trial of George W. Cole

The defendant was impelled to the commission of this act involuntarily and by the instincts of our common nature. It was nature that accomplished the result; let the accusation and indictment be directed against her. When society shall pass laws to punish this monstrous crime of adultery with adequate severity, then and not before let it forbid the execution of private justice. Until the community discharge this duty, the guardianship of the family altar is committed by nature to him who presides over it. And that man who defends the domestic citadel from adulterous assault, will find sufficient sanction for his conduct in the approval of his own conscience, though it should lead him to a martyr's grave.

But I forget, there is a remedy. And the private interests in this prosecution have employed and liberally paid eloquent and distinguished counsel to come here and teach us what it is. The laws of society have, in the judgment of these distinguished gentlemen, provided a sufficient, a perfectly adequate remedy; a safe, certain, and unfailing cure, in their judgment, for all the rankling and agonizing wounds of degradation and dishonor. When the affections of your wife have been stolen and her person polluted, when your home has been broken up, your prospects in life destroyed, your hopes of happiness blasted, just go to a lawyer's office. It makes no difference whether it is in Tweddle Hall, Albany, or in Wieting Hall, Syracuse; the doors always stand invitingly open in either place. Tell him the story of your wife's dis-

Classics of the Bar

grace, and make him appreciate, if you can, the sorrows of your broken heart or the degradation of your manhood. Tell him what was the moneyed value of your wife when she gave you the treasure of her affections and committed to your trust the protection of her virgin innocence. He will advise you to make merchandise of her in a court of justice, to have her appraised by witnesses and lawyers, and finally struck off to her seducer at such a valuation in money as a jury of the country may put upon the lost and fallen woman. He will advise you to coin your tears and groans into dollars and cents. And now, gentlemen, pursuing the same idea, I address myself to you as affectionate husbands and fathers of beloved children.

Suppose I say to you in the language of another:

There is one hundred thousand dollars for you; embrace for the last time the wife you love, retire from your house and make way for the adulterer; give up your married bed to the caresses of pollution; wander about the earth a broken-hearted man, the scorn of the worldling and the pity of the good; think no more of the happiness and tranquillity of your former state; true, the adulterer has destroyed these forever, but never mind; don't make yourself uneasy about such small matters as these; here is the money; put it in your purse; there is no better thing in this world than money; when your heart feels sad or your footsteps weary, just jingle the dollars, and their merry sounds will furnish a panacea for all your convulsive sobs. Would you not think I was mocking at the holiest

The Trial of George W. Cole

and tenderest passions of your heart, and spit upon me with unutterable scorn and loathing?

Dress up the argument for a moneyed compensation, in what language soever you will, and it will be impossible to put it in such a shape as to sound anything better than an intentional insult to your understandings. I appeal to the conscience of each individual juror to answer whether he is prepared, for the first time in two hundred years, to sanction by his verdict the abominable doctrine that a moneyed compensation is the only remedy for the bleeding wounds of a broken heart. For the credit of the capitol of the Empire State, let not a verdict go forth from this place that shall say to every libidinous scoundrel in the land, he may safely enter any house he pleases and rifle it of its purest contents, providing only he can pay the moneyed cost of his adultery. Act upon that principle, and you tell every libertine, that if he only foots the bill, he is at liberty to turn any honest man's house in Albany County into a house of ill-fame for the gratification of his lust, and that in the opinion of an Albany jury, he is exempt from all further accountability, either human or divine.

Or will you not rather follow in the wake of that unbroken line of precedents which has been sanctioned and followed by every jury for the past two hundred years, and render such a verdict that, while it accords with perfect justice, shall also be more consistent with the enormity of the adulterer's offense? Appealing

to the fixed and settled judgment of the civilized world for my authority; to that calm and enlightened public sentiment, which is the growth of time and experience, and on which generations of men in every rank and station have acted with perfect safety; I affirm that within the last two hundred years, no man has been punished by any court of justice, either in this country or in England, for slaying the seducer of his wife, his daughter or his sister, when that motive and that alone has prompted the fatal blow. If modern morality has directed no human legislation against the invader of domestic peace and destroyer of female purity, yet the best representatives of enlightened moral sentiment, those *jurors*, who have from time to time assembled in the courts of justice, and been charged to inquire into the guilt of the outraged and frenzied husband or father or brother, have, so far as they could, supplied this defect of duty by adopting as their rule of action, the law of their God, when amid the solemnities of Mount Sinai he thundered forth for all time, "*Thou shalt not commit adultery*," "*Thou shalt not covet thy neighbor's wife*"; "The man that committeth adultery with another man's wife shall surely be put to death."

The voice of God comes resounding to us to-day through the ages that are past, and tells this court that the verdicts of juries which justify the death of the adulterer at the hands of the betrayed husband, are given in obedience to that law of our nature which governs and controls in every human breast through-

The Trial of George W. Cole

out the widespread earth. On the great law of public opinion, sanctioned and sustained by the enlightened sentiment of the Christian world, inspired by the teachings of the Great Jehovah, I assert that General Cole is free from crime both in the sight of God and man. And on that great and final trial day, when you and I shall appear side by side with him to render in our account of the deeds done in the body, if there shall be no greater sin recorded against him than the punishment he inflicted upon his wife's destroyer, be you and he assured that he need not fear to approach the throne of the Omnipotent Judge to answer for the conduct of his whole life.

The jury made a mistrial. Several months later Cole was placed on trial the second time and acquitted.

The Case of Kilbourn vs. Thompson

ON March 14, 1876, Hallet Kilbourn, a real estate broker of Washington, D. C., was adjudged by the House of Representatives guilty of contempt for refusing to appear before a special committee of the House and produce for inspection certain private books and papers. The committee had been appointed for the purpose of investigating an alleged real estate pool and the Jay Cooke indebtedness to the United States.

Acting upon the authority of the House resolution, John G. Thompson, sergeant-at-arms, committed Kilbourn to jail.

Some time after this, a writ of *habeas corpus* was sued out by Kilbourn, and the court held that his arrest and imprisonment was unlawful, and he was released from custody.

Kilbourn then brought suit for damages against Thompson, alleging false imprisonment.

At the trial the plaintiff was represented by General Noah L. Jeffries, Enoch Totten, Charles A. Eldredge, and Senator D. W. Voorhees. The defendant was represented by District Attorney George B. Corkhill,

The Case of Kilbourn vs. Thompson

Jeremiah M. Wilson, and Randolph Coyle. Senator Voorhees made the closing address to the jury.

Speech of Senator Voorhees

MAY IT PLEASE THE COURT, AND YOU, GENTLEMEN OF THE JURY: Six years ago, when I was not a member of either branch of Congress, a citizen of the United States, whom I first knew as a citizen of my own State, Mr. Kilbourn, was thrown illegally, arbitrarily, into the jail of this district. At that time I was called to his side as one of his counsel, a place I cheerfully and promptly took, because I knew the laws of this country, its Constitution, and all that is dear on earth to an American citizen, had, in his person, been stricken down. The result of six years' litigation has proved the correctness of my views. I allude to this fact, however, mainly for the purpose of saying that my connection with this case then, and ever since, compels my attendance here now in its closing stages. My presence here to-day is in the fulfillment of professional obligations to a client, incurred years ago, and continuing from that time to this.

Gentlemen, the wrong and injury complained of in this action was not committed by the government of the United States. The House of Representatives is not the government. It is an important branch of the government, but it is only a branch. The injury in-

dicted upon Mr. Kilbourn was the act of the House alone; the Senate took no part in it, in this instance, but both the Senate and the House have, almost from the beginning of the government, committed similar violations of the Constitution in the arrest and imprisonment of citizens, and the action of the House in 1876, in the case of Kilbourn, was sustained by a long line of bad precedents. Both branches of Congress, under a mistaken idea of their authority, have, up to a recent date, imprisoned citizens at their own unrestrained will and pleasure, for indefinite terms, without sworn accusation, without trial, without due process of law; simply under a vague claim of power to punish for contempt. They had been in the habit of throwing men into prison in this way for years prior to the present case. Down in the lowest basement of the capitol there is what is called a crypt, which has served as a prison; a fact as odious and revolting to my mind as any of the horrid appliances of the inquisition; recalling as it does the ancient methods of extorting testimony in the vaults of dungeons under ground.

But at last this power was asserted against a man who dared resist it, and I rejoice exceedingly that he did. I rejoice that Kilbourn had the courage to confront the arbitrary giant which so long crushed everything before it.

It is no small thing for a private citizen, single-handed and alone, depending on his own resources, to confront either branch of Congress, with all of its

The Case of Kilbourn vs. Thompson

machinery and its power; with its organized, corporate thunderbolts to hurl upon his head. It is no small thing, and whenever a man does that in the right, and conquers for himself and for you all certain great fundamental principles of liberty, he should be an object of tender and careful regard at your hands; he should not be an object of assault. He becomes a public benefactor; he has fought a battle, not merely for himself, but for each one of you, and for your children when you are dead and gone.

Gentlemen, never in the whole course of my life have I heard such an attempt to belittle the great question of human liberty as has been made by the defense in this trial. Is it, indeed, a small thing for an innocent man to be in prison? A sadder sight cannot be witnessed; a sadder thought never entered my mind. Think for a moment. Our sympathies sometimes go out even for the guilty in their deprivation of liberty, but what shall be said of man wholly innocent in slavery, chains, and prison! You are now considering the case of a man who was cast into prison without lawful charge or accusation, and who has been found by the Supreme Court of the United States, not only innocent of the semblance of wrong, but to have been upholding and defending the Constitution of his country from first to last.

Does he stand before you in an attitude to be rated at so much a day for loss of time while in jail; to be sneered at because he tried to console the weary hours of imprisonment by refreshments—by a generous

Classics of the Bar

table? Does the man who was asserting that for which armies have been marshaled, for which nations have struggled, for which men have bled on the scaffold; does he seem to be the man who should be assailed in a court of justice when he comes before you to ask that which has already been decided by the highest tribunal in the land to be his right? I place Hallet Kilbourn before you here just as he is. He stands here in the right. That is a great element in a trial of this kind. There is not a flaw in his conduct. When arrested, when brought before the committee, was he contumacious? Did he stand merely upon a stubborn notion of refusing to do what he was required to? Let me show you the just and careful appreciation of his rights, and of yours, which he evinced at the time. He says here in the official proceedings of the House of Representatives, which the court has held to be in evidence before you:

But I will make no conflict with the authority of this House, unless I am driven to it by the stress of sheer necessity for the preservation of my undeniable rights. It is easy to bring this affair to a plain issue. If the committee of the House will find and assert the truth of any fact which connects the real estate pool with our public interests which it is the duty of Congress to protect, you shall at once have all the information I can give you about its nature and history.

Point it out. Let it be shown, and he would respond. He proceeds:

The Case of Kilbourn vs. Thompson

I have asserted on oath that it is purely a private transaction, having no connection, direct or indirect, with any public affair or with the official conduct of any officer. The truth of my statement is made manifest by all the facts which are known, and nothing is even alleged from which a contrary inference can be reasonably drawn. Now let the question be squarely presented. If the committee or the House has any well-grounded reasons to believe that the production of my private papers or the revelation of my private business will promote any public interest or remedy any public wrong, and if either the committee or the House will assert that to be true as matter of fact, the House and all its committees shall have whatever is demanded; or if any private individual will make oath that the papers asked for will lead to the detection of any misgovernment or the exposure of wickedness in high places they shall be open as day to your inspection. On the other hand, I cannot acknowledge—

And if he had he would have been bastard-born to the institutions of liberty—

And, on the other hand, I cannot acknowledge the naked, arbitrary right of the House to investigate private business in which nobody but me and my customers has any connection.

That statement rests on the principles of the Constitution, and the stand which Mr. Kilbourn made then was in the interest of every man's right to the privacy and security of his own personal concerns. "Show me," said he, "where my concerns affect the

public interests—show me where a public wrong can be redressed by opening my drawers—and they shall all be opened; but until you show that I stand upon my rights”; and less than that would have made him unworthy of the protection which the courts for six years have given him, and which I know this jury will give him here to-day. Let me go a little further. My brother Smith saw fit to convey in a delicate sort of marginal way—I will not use the word insinuate, for it might not be agreeable, but it was something after that order—that there might have been something wrong; that an investigation was very desirable, and that possibly Mr. Kilbourn was not so entirely in the right. Gentlemen, in this action of tort for damages I intend that my client shall appear before you just as he was, in the right absolutely, not qualifiedly, but everywhere broadly in the right; conceding everything that a citizen should concede to his government to detect wrong, correct wickedness, punish crime, if there was crime. In this connection I wish to read to you an answer in another part of the report of the elaborate investigation that took place. And this was before the committee itself:

Question. You refuse to produce them before the committee in response to this subpoena?

Answer. Yes, sir. I would like to state the reasons therefor—my personal reasons. My partner and myself are in a private business. We have no connection with the government of the United States, and never had; are conscious of having violated no law; are not charged with

The Case of Kilbourn vs. Thompson

any fraud. Our business that we do is done with private citizens throughout the country, and I stand upon the right which I think belongs to every private citizen not accused of violating any law of being protected in his papers. Whatever the law decides, however, I am willing to abide by. I sustain but one relation to the government, and that is to pay taxes and obey the law. That is the only transaction I have with the government at all.

You will remember, gentlemen, this investigation was not launched at Mr. Kilbourn for anything alleged to have been done by him. It was launched at him for the purpose of tracing up somebody else's business that was supposed to run in its ramifications through his office. A more generous battle for right no man ever made. Not fighting alone for himself, but for the rights of men who had intrusted their affairs with him. I will now read the answer of Mr. Kilbourn to the committee to show you the starting-point. I have, in my life, often talked to juries, and know that it is agreeable to them, as it is to me, in summing up to take a starting-point, and see where we are; who is in the right and who is in the wrong, and then step along to a conclusion. Inasmuch as the counsel on the other side have sought to raise a mist upon this question, I shall undertake to clear it away. There is sunlight in these answers here. He continues:

I want you to understand that I do not resist it because I want to shield anything from the government interests. I am only resisting it and protecting my own interests as

Classics of the Bar

a citizen who has but one relation to the government, and that is to obey the law and pay taxes. The government has no interest one way or the other in this matter. If it had, through Jay Cooke, or Lewis, trustee of Jay Cooke & Co., it was all settled. We have settled through the courts. If the settlement was not fair the court is open for it, I understand. Instead of resisting anything that affects the government, as I said, I would help to promote the government's interest if it can be shown wherein I can do it.

All that he asked was that the Constitution should have some respect paid it in attempting to reach his papers and in the effort to ride over all his private rights. In all this, he has since been fully sustained—but more of that as I go on. I want to fix his status as a law-abiding citizen, shielding nobody in wrong; covering up nothing that the government had a right to inspect; if the House of Representatives would point out exactly what they wanted in his books, he would cheerfully furnish such information; but the proceeding was as if the House of Representatives had asked some large business firm here on Pennsylvania Avenue, some mercantile establishment, to come up and bring all their books and let them be inspected without any specific allegation as to what was sought. It was the most thorough, unqualified, drag-net proceeding ever known. No seine was ever thrown into the Potomac with a wider, more unqualified view to catch everything without any specific purpose to catch any specific thing, than was this proceeding

The Case of Kilbourn vs. Thompson

against Kilbourn's office. He resisted on the grounds which I have read, and thereupon the order was made for his arrest and imprisonment. It was then that I came into this case. The House reluctantly at last responded to the writ of *habeas corpus*—that giant writ that pries open prison doors the world over, except in Ireland, I believe, where American citizens are imprisoned as suspects, with exactly the legality that Hallet Kilbourn was imprisoned by his own government, and no more. And I say in this connection that the first duty of a government is to protect its own citizens at home or abroad. No higher duty was ever imposed upon a government than this. The government which is willing to imprison one of its own citizens without law or allow any other government to do it is on the road to ruin. It was said by the wisest man of Greece when the Greek republic flourished highest and strongest that the greatest injury a government could receive was in the injury of one of its citizens, however humble, whether inflicted upon him by his own or by any other government. The first duty of a government is to protect its own citizens. There lies the power of a government. Protect your citizens, and they will love their government; protect your citizens, and you have a loyalty that is not mere lip service, but a loyalty that springs from the heart. Protect your citizens; give them the full shield of the law and ample protection of their rights under the law, and you make good citizens. Leave them to be buffeted, imprisoned

without redress, without justice, and you alienate them and create a disloyalty equal to any that ever raged through this or any other country.

Gentlemen of the jury, when this question came before the House of Representatives, I wish to show you what views were held there. They were somewhat different from the views of Mr. Smith. They were somewhat different from the views of my friend, Colonel Corkhill, if I gathered what his views of the law were, and I am not certain that I did. When the question came up in the House of Representatives whether Colonel Thompson should be allowed to respond to this writ with the person of this prisoner, a debate arose that will throw light on this question, and I desire to call attention to some utterances that were made at that time. They fall with peculiar force now on this question. I read the words that fell from the lips of James A. Garfield, then a member of the House of Representatives. What said he upon this great question? Did he differ from the views that I am pressing here? Did he agree with the gentlemen on the opposite side of this case? No, no. He said:

But there are some things that courts and congresses and houses of representatives and people everywhere must pay heed to, at least as a matter of good conscience and discretion. Now, I wish to refresh the minds of gentlemen for a moment with a reference to the fourth article of amendments to the Constitution, to see what they think it means.

The Case of Kilbourn vs. Thompson

I will read that as he read it on the floor of the House.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons and things to be seized.

No such procedure as this was had in this case. General Garfield proceeded with his argument:

In our original proceeding in the first step we took, admitting for the sake of argument, our jurisdiction and our right, did we use the proper discretion?

He was speaking then of the arrest and imprisonment of Kilbourn.

Was probable cause shown why this particular inquiry should be had, and these particular papers be demanded?

Garfield made that inquiry just as I did.

On the contrary, did not the witness declare his readiness to answer if the committee would say that they had any ground for believing that he had in his possession papers which would disclose, or that a true answer to the question would disclose, a single official personage with whom this House desired to deal? And they did not answer that they had any such ground on which to plant the question. Then, does not this House put itself in the attitude of going to a private citizen and demanding that

Classics of the Bar

his private papers, his private business, shall be disclosed to them, only because they hope, yet without probable ground for believing, that the answer will disclose something that may lead to something else? Why, sir, do gentlemen remember that that article of our Constitution was put there by our wise fathers to prevent precisely such a consummation as that? Do they remember that the great Algernon Sidney was visited inquisitorially, that his papers were searched, that his library was seized, and as a result of throwing a drag-net over the whole, when no special allegation of any treasonable thing was made as to his papers, there was discovered a manuscript essay on Liberty, which he had written in the seclusion of his own home, and which being thus fished out by the drag-net of that sort of search and seizure, he was put upon his trial, condemned to death, and publicly executed as a traitor to his country, upon evidence that could never have been disclosed except by unreasonable search and seizure? And it was to prevent such invasions of personal liberties of citizens that our fathers put this clause in the articles of amendment to the Constitution.

That is wisely and well said. Gentlemen, these are strong, just words, none the less strong that they come from the man who uttered them. He proceeds:

Now, I must say that the party to which I belong have, in the stormy years of their administration and career here, done many things that I have looked upon as of doubtful propriety and doubtful authority in reference to the rights of private citizens. In the very turbulence of that time I stepped forward to do what I could before the Supreme Court to prevent the punishment by military

The Case of Kilbourn vs. Thompson

commission of persons whom I had never seen, and have never yet seen; of people who had committed an offense most offensive in my sight against the country. But I was unwilling they should be punished unlawfully, and did what I could to prevent such punishment.

That is the language of the late President of the United States; and if he had no other monument over his tomb, while in fact he will have thousands—if he had but this one to speak for him, it would speak through all the universe, and show that he understood the Constitution and was faithful to personal liberty. But again, before I pass from this debate, I wish to read just one more brief passage from what he then said. He was at that time the leader of the House. Speaking of this proposition to arrest a man and imprison him under such proceedings as were then pending, and to refuse him the writ of *habeas corpus*, he says:

That is to me a most bold and startling heresy that this House is above the Constitution. That is what it tried to be. We brought it down to the level of it when we got into the courts. We have of course the power to expel a member. We have the power to preserve order. We have all those ordinary parliamentary powers. But when we have pushed these rights of the House so far in these modern days, that according to the doctrine of my friend from Ohio [Mr. Hurd], the House may imprison a citizen for two years, and the Senate may imprison him for life (because the Senate is an immortal body); when we have so far pushed the privileges and powers of this House to

Classics of the Bar

make it an uncontrolled and uncontrollable despot, a tyrant that overbears all boundaries, that forces itself into all private closets, and breaks into every man's domicile, that its power knows no limit but its own discretion, that it shall have the right to uncover the secrets of all families within the republic, that there shall be no privity to which it cannot penetrate, but, unrestrained by law, unlimited by the Constitution, like the despots of the middle ages, shall be lord paramount of all rights within its boundaries, is a doctrine so monstrous, if adopted by us, that it ought to cover us with infamy and bring down upon us the wrath of an outraged people. Let this doctrine be once proclaimed, and you arm every citizen in hostility against the Congress of his country. You make the House the natural enemy of every citizen, and every citizen ought to be our enemy. I declare myself the implacable foe of such a tyrant and of the doctrine that makes such tyranny possible. The doctrine asserted to-day on this floor would make this House the most odious tyranny that ever stalked abroad over any land to curse it.

Now, gentlemen, I have thought proper to dwell upon these points surrounding the birth of this case so that you might see it plainly in all its bearings. Instead of there having been any assertion of authority contemplated by the Constitution, under oath or affirmation, what do you suppose the language was on which this arbitrary, high-handed proceeding was based? "And whereas Edwin W. Lewis, trustee of the estate and effects of said firm of Jay Cooke & Co., has recently made a settlement of the interest of the

The Case of Kilbourn vs. Thompson

estate of Jay Cooke & Co., with the associates of said firm of Jay Cooke & Co., to the disadvantage and loss, as it is alleged"—there is the point "as it is alleged." There is the assertion of power on the part of the House, "to the disadvantage and loss of the government, as it is alleged." Alleged by whom? Alleged where? Under what authority of law? Is there a lawyer here at this bar, is there a court anywhere, is there a jury anywhere, that would not spurn, scorn, and spit upon such a basis as the foundation on which to deprive a citizen of his liberty, cast him into prison, destroy his health, destroy his business, and threaten his life by disease? "It is alleged"! Who alleged it? The Constitution pointed out how it should be alleged on oath or affirmation. Those vague words "it is alleged"! Oh, what a common liar they are! "They say," in a newspaper, is the proclamation of an article resting generally upon the statement of liars. "It is alleged"! It is the irresponsible manner in which statements are put forth. It is worse than anonymous; worse than irresponsible. It is the worst form of slander; vague, vile, creeping slander. That is all there was on which to arrest Mr. Kilbourn, whose punishment in jail, and whose sufferings there are made so very light of here. Not a single form of law was complied with. And when we came before this court six years ago—I see, on looking, that it was on the 24th day of April, 1876—I had the honor of addressing this court then on great questions of law. Now I am addressing you on questions of fact.

Then the great questions of legal right were outstanding. They were unsettled. Precedent, authority, usage were quoted against us to remand Kilbourn back to prison. He had the manliness, the high sense of honor, and of duty, to confront all the power which the House of Representatives could bring to crush him. It is six years since those questions were submitted. During that time he has pursued his rights as a citizen should. We are coming now to the close, and I intend, before I sit down, to see whether this jury measures cheaply, values lowly, the right of a citizen whose rights are beyond question.

If one single step had been taken by Kilbourn compromising his honor as a man; if one single word had ever fallen from his lips in derogation of his high character, you might mitigate these damages. But as the case stands there is nothing to mitigate them. Not that Mr. Thompson did more or less than his duty. He knows, and we all know, that he is incapable of doing anything else than his duty. I will make but one single passing remark in regard to his responsibility. This is not a claim against the government. If the House of Representatives does not stand by one of its own honorable officers, out of its contingent fund, it would be so blighted and disgraced that no man would ever want to occupy a seat in it again. It is their place to do it. It is not a claim—and I mention this because Colonel Corkhill alluded to my position as a senator—that I shall ever vote upon. As a matter of course not. But, gentlemen,

The Case of Kilbourn vs. Thompson

to continue my thought. What is there to mitigate these damages? Is there anything in Mr. Kilbourn's conduct? Not so. I have dwelt upon his conduct. I have dwelt upon the beginning of this case to show the attitude in which he comes before you—fighting a great battle for the liberty of the citizen. He has done nothing unbecoming an honorable citizen. I am glad to stand here for him. He has destroyed this despotic claim of power which Congress in both branches has exercised so long. What was that claim of power? I am not going to dwell upon it again, as I once did at this bar. But I shrink appalled when I think of it. It was the claim that, without oath, without accusation, without affidavit, without indictment, without presentment, without information, one branch of Congress—not both branches, but one, could resolve itself into a court, where, without trial, it could convict and sentence to indefinite imprisonment any citizen of the United States who refused to answer any question they proposed to him—any question, no matter how private, how secret the matter to which it related. The House claimed to be the sole judge of the propriety of the question. The citizen had no right.

The House proposed the question, and proposed to judge of its propriety, and no matter where it reached, whatever might be the domestic relation, it was not for the citizen to say no. If you did, under this claim of power, which is now broken and shattered (and the Kilbourn case will be pointed out in

Classics of the Bar

after years as the point of time when it was broken), they had the right, without further trial than your refusal, to arrest you and imprison you for an indefinite length of time. The House, perhaps, might, out of some sort of concession, liberality, courtesy or other grace, determine that their victim might go out of jail when they adjourned, but in the case of the Senate there would be no such concession, because there is no term of existence to the Senate. And, in fact, in one instance, the House of Representatives went off and left Pat. Wood in jail for some weeks afterward when, I believe, some sergeant-at-arms who was more respectful to the Constitution than the House was itself, at last turned him out. Do you tell me that that man ought not to have recovered? The statute of limitations bars him now. He went away broken in spirit, as dozens—I might say hundreds—have done before and since. In other instances that I could name they were thrust down in the crypt, kept for imprisonment purposes, and remained there at the will and pleasure of Congress. And this was not, as I have said, confined to the House of Representatives, for the Senate has done it.

It was high time that the Constitution should be reasserted; that its great principles should be revived, and further, that the limits of the power of Congress should be determined. Those powers should not be allowed to overflow everything; to overflow your hearthstones, to overflow your private drawers, to overflow not merely your papers, but your mind and

The Case of Kilbourn vs. Thompson

its secrets—powers which, in their full assertion, as six years ago, could penetrate the recesses of your soul, and drag hence your secret thoughts, or put you in prison without limit as to duration. It was high time for this power to be broken, and I am glad that I stood in this court, mostly relying upon the writings and teachings of that great apostle of human liberty and constitutional government, Thomas Jefferson, for the correction of this great evil. Authorities of courts also were at hand; but his writings on the question were a flood of light, demonstrating that this arbitrary power could not exist.

Gentlemen of the jury, let us take another step in this case. The defense presented here on the question of assessment of damages I hardly know how to treat. I will speak respectfully, of course, of the counsel for the defense, for I feel that way; but it was such a trifling—such a belittling of the great fundamental rights of man; rights for the maintenance of which men have walked unflinching to the scaffold; for which nations have drawn the sword, that I was sorry to hear it. They told you that you ought not to give much damages to this man, whose fortune was broken, whose life was jeopardized; that you ought not to give him much damages because he was treated kindly and as a gentleman by Colonel Thompson. Is not Mr. Kilbourn a gentleman? If Hallet Kilbourn is not a gentleman I have yet to hear the fact mentioned, and I have known him a quarter of a century. We were young men together in Indiana. Why should

he not be treated as a gentleman? In fact, Mr. Smith was dissatisfied on two points. First, he was dissatisfied with the decision of the Supreme Court of the United States; and secondly, he was dissatisfied because Kilbourn received kindly treatment from Colonel Thompson. Mr. Hallet Kilbourn was not a burglar. He was not a forger; he was not a thief; he was not a murderer; he had killed nobody. Why should not he be treated kindly? But it seems that such treatment was compensation in the minds of counsel for the defense.

Gentlemen, did you ever reflect on what imprisonment is? Do you think a carpeted floor would make a jail anything but a jail if you were there? Opposing counsel ask you to put yourselves in Thompson's place. I have no complaint to make of John G. Thompson. I know him well, and I know that no truer, better man lives than he is. They ask you to put yourselves in his place. Put yourselves in Hallet Kilbourn's place likewise, and then answer me whether a carpet will make the jail floor any softer to your feet. Put yourselves in his place, and then answer me whether a picture on the walls would make those walls any less the walls of a prison. Put yourselves in his place, and then answer me whether, although you can solace yourselves with a glass of wine with your friends, whether it is not the jail still; and whether, however good the fare may be, it is not still prison fare. It has been said that captives' tears have watered their bread through all the ages, and that is

The Case of Kilbourn vs. Thompson

true. The prison is a prison—it matters not how you adorn it. In prison, gentlemen, liberty assumes its dearest form. It is not for you to measure here in your jury-box how Hallet Kilbourn felt for those forty-five days. Liberty is said to be brightest in dungeons, for then its habitation is the human heart. When it has no other habitation than the heart then it grows brighter. That means simply to convey the thought that man dwells on it then; he knows what it means then; he knows its value; he properly estimates the priceless heritage of liberty when he is deprived of it. The slave knew the value of liberty better than you do. The man who is deprived of a blessing feels that blessings brighter grow as they fly away. So the enjoyment of freedom, the right of constitutional protection, when you are deprived of them, assume then their greatest value. Oh, how little (my friends will pardon me for saying so), how beneath the lowest point to which my contempt can descend is a defense based upon the fact that a man was allowed to board himself in jail, and that he had the right to purchase some delicacies beyond the prison fare that was allowed him. I cannot appreciate such a defense. I was born with a mind incapable of comprehending such an argument.

The jail rises up before me. I breathe its polluted air. I feel its humiliation and shame. I shrink from its degradation. The prison has an awful life of its own. Look at the dark, weird shadows of the evening gather over the lonesome inmate as he longs for home

and those he loves. How his heart sinks down in the gloom and hush of night; behold him awaken in the morning after a dream, perhaps of home, to find himself behind bars of iron. For awhile he may wonder in a dazed way where he is, and what it all means; but the reality will soon enough break upon him that he is in jail herded with criminals. Compensate all this if you can; I cannot make the figures. Counsel for the defense made some in your hearing. They talked about a *per diem* rate of compensation. Why, gentlemen of the jury, there is not money enough in this world to pay a man who is innocent, and who knows that he is innocent, as Hallet Kilbourn does, and as the Supreme Court of the United States has decided that he is—I say there is not money enough in the world to pay a man for thoughts such as must have passed through his mind as he saw Mrs. Kilbourn and his children drive away, leaving him in the dungeon. There might be money enough to pay my friends on the other side—no, I will not say that; I will defend them from any such charge. You could not pay Colonel Corkhill money enough to hire him to stand behind the prison bars under an arbitrary commitment, without law, as he knows; without oath, without charge, and without crime, and see his wife and children driving off in the dusk of the evening, leaving him there to solitude and disgrace. Compensatory damages! I will tell you, gentlemen, what the attitude of this government should be. Instead of the government sending her representatives here to

The Case of Kilbourn vs. Thompson

defend this case, those in charge of affairs should have come forward and said frankly, "We laid our hands on this man wrongfully; we were mistaken; we are able to be magnanimous; we are able to be liberal, generous, and just; we are not standing here to higggle about a money compensation; he ought to be compensated liberally and broadly because we have been mistaken; we were in error, we arrested a citizen and trampled on his rights under a mistaken view of the law and the Constitution, and it is ours to make reparation." That should be the voice of the government. I have no hesitation in saying it, widely, and as far as my voice may reach, that the attitude of this government toward Mr. Kilbourn or any other citizen it has wronged, whose rights it has trampled upon, should be one of broad, generous reparation, not one of technical, miserable calculation of *per diem* for suffering. There are times in the lifetimes of men when you cannot measure an outrage by the day. There comes sometimes a flash of wrong and of outrage that degrades and humiliates a man for which it is impossible to give too great a compensation; but when you find in addition, as in this case, a man contending for his own rights, for the rights of those whose trusts he held, and for your rights just as much, you certainly will lend no ear to this pitiful plea on the part of the defense, that you should mitigate damages because he was not put in irons, or treated more harshly.

In fact, Mr. Smith said that if Mr. Thompson was

Classics of the Bar

to be censured at all, it would be because he treated him with too much kindness. Ought he to have treated him with any less? How strangely that sounded to me. As good a lawyer as Mr. Smith is, he knows the Supreme Court of the United States has decided that Mr. Kilbourn ought not to have been there at all, ought not to have been there a moment; that he had no more business to be there than I had, and yet there was an implied censure absolutely of his own client, because he did not treat him with a little more severity; and this when the laws of his own country now say in his ears and in his face that he ought not to have been there at all. It is greatly to Mr. Thompson's credit that his broad heart comprehended the proprieties of the situation as it did. The Supreme Court of the United States, as I have just said, says broadly to this defense, that you, who are in the wrong, have been in the wrong all the time; you are in the wrong now, and Mr. Kilbourn is in the right, and has been in the right all the time. How does it sound for men who have been condemned as in the wrong trying to belittle the claim of a man who has been decided to have been in the right from first to last? As I have already stated, gentlemen, the saddest sight on earth to my mind is that of an innocent man in prison. No thanks to Congress that Mr. Kilbourn was released at all. He would have remained there until the end of that Congress, if not longer, but for the courts to which he appealed as a law-abiding citizen.

The Case of Kilbourn vs. Thompson

Gentlemen, I know there is some vague trouble often in jurors' minds to get at a measure of damages. You know that, and I know it. We mutually think on that subject alike at this moment. There is some trouble in reaching a point from which to start a calculation. But let us look and see whether we should have much trouble on this subject in this peculiar case. Mr. Kilbourn lay in that jail for a month and a half at an insalubrious part of the year. He lay there from the middle of March to the latter part of April, during the capricious, changing, damp weather that prevails here in March and in April. I shall not stop to dwell upon the unsightly things that were surrounding that jail. There is nothing that can surround a jail looking worse than the jail itself. The blue sky is outside, and the free air, and that is of right his. His home is outside, and there he should go, and anything short of that is no compensation or alleviation. He was there during these six weeks. Its effect upon his health is undenied, except in so far as my medical friends on the other side say differently. I do not know whether they speak from practice in the profession or experience in their own lives. At any rate, they suggest that high living is a bad thing. I will agree with them on that, but we are not left to the high medical attainments of the counsel on the other side on this point. We have evidence on this subject. Fortunately we are not left to any conjecture or appeal to you. I appeal to Dr. Bulkley, his physician, and who has been his physician most of

his life in Washington. What does he say? He tells you that he contracted malarial fever. Those were the exact words. That Kilbourn contracted malarial fever in that jail. Now I never heard that a glass of champagne would give a man malarial fever. [Laughter.] It may do so. It may give the counsel for the defense malarial fever, but it never did me. [Laughter.] It is said that troops of friends went out there to see him, and my brother Corkhill says that imprisonment under such circumstances cannot call for any compensation. Why, gentlemen of the jury, I have read of prisons turned into palaces by the devotion of friends; devotion to a man who was asserting human rights and had fallen under the power of a despotic government. They say his friends flocked to see him. Why should they not? They say there were members of Congress and senators went to see him. I am glad to hear it. I was in neither the one nor the other branch of Congress at that time. I certainly would have gone if I had been here. He had done nothing to be ashamed of. On the contrary, he had done that of which any man had a right to be proud. He had asserted the Constitution of his country in all its purity, its strength and glory, as has since been decided. Why should not men go to see him? But could that compensate him for loss of his liberty? Could the fact that Algernon Sidney, or Russell, or any other martyr to human freedom, received the calls of sympathizing friends, compensate their wives and children after their heads had rolled upon the

The Case of Kilbourn vs. Thompson

block? Now I put a square question to the counsel for the defense; Hallet Kilbourn might have died there; he might have died there of disease contracted in that jail. He might have died there of the malarial fever that Dr. Bulkley speaks of. Would it have been a compensation to Mrs. Kilbourn and the children after his death, or tended to allay grief in the private circle, to have been told that friends called to see him? I say his life was endangered there. The medical testimony shows it. It might have gone; it might have been lost. It is a wonder that it was not, for there was a great pressure upon him.

There are different types of men who go to jail; on different types of men imprisonment tells differently. Take a man with an active brain like Mr. Kilbourn's, a fine temperament, proud of his standing, engaged in a large business that was being destroyed, and his credit broken down, and imprisonment to such a man is more than the imprisonment of the body. The iron was entering his very soul. His mind was racked and tortured, and to my personal knowledge he was not the same man again for two years afterward. Suppose he had died under this pressure. Pressure—I have not half described it; pressure and loss upon the one hand; separation from his family, pride of character, a man widely known, a man with patrons who had trusted him in his business—all these things weighing on his mind; and then, what was even possibly more than all, the determination of a brave man to confront an outrage and to fight it out. He was

Classics of the Bar

employing counsel. I was but one. I was associated in the case with Jeremiah Black, with Matthew H. Carpenter, whose bright spirit has now passed from earth, and others living, who are around me—all these were called to his rescue. What for? In vindication of the right of an American citizen; in vindication of the right, under the Constitution, of each one of you from a similar outrage. Such a load was hardly ever upon a man's mind. Public and private cares were all surrounding and crushing him. No wonder he marched from that jail a broken man. No wonder he came forth with malarial fever. No wonder that his medical attendant told him to take a trip far away; to go away from these scenes; to go away from this atmosphere; to go where he could obtain rest. No wonder that a good friend (Mr. Hutchinson) had to go with him to California, where, in that cooling atmosphere and climate he could bathe his fevered frame. That is the condition in which he came out of this prison. And yet these gentlemen say all that does not call for compensatory damages. Compensation covers a great many things. Compensation covers much more than the mere destruction of property.

They will say, however, in the next place, in estimating this question of damages, that it was impossible for his business to be hurt by it. And the solicitor of the treasury, with infinite shrewdness—I do not know whether he was born in New England or not—wherever he was born he does credit to his birthplace—

The Case of Kilbourn vs. Thompson

with infinite shrewdness tells the jury that Mr. Kilbourn was well advertised, and that therefore his business could not have suffered. He was well advertised! Good Lord deliver you and me from such advertisement! [Laughter.] He was well advertised; advertised, they said, as a man who was faithful to his clients, and would not divulge their secrets. Very well; he was advertised that way perhaps once, and then he was advertised 1,750 times to that once as a rascal, who had great frauds covered up, that this real estate pool was a cesspool, and that he had the top lid on it and would not take it off. [Laughter.] His credit and standing all over the country was thus impaired, and everybody knows it. Discredit, calumny, and accusation followed him everywhere, and although one might say, "he stood it pretty well, he has good pluck, and will not go back on his clients"; still he would not want to get into such a concern where another investigation might take place and Kilbourn might break down, or there might have been something wrong. There was nothing wrong, no more than in my bare hand, for I say here to the gentlemen on the other side that after we made the House of Representatives know the law and Chief Justice Carter released Mr. Kilbourn under the writ of *habeas corpus*, Mr. Kilbourn sat down and wrote a letter (which I have here), respectful in tone, to the Speaker of the House, saying in substance: "Now, having asserted a great principle and vindicated the fact before the courts that I was right and you were wrong, you

can send a committee and look through my whole establishment if you wish." They did not do it. That is the history of this case. Advertised was his business! Why, you must go by the testimony here. Mr. Kilbourn swears—and I am dwelling on these points to enable you to come to a verdict—Mr. Kilbourn swears that it destroyed his business; that it broke up his firm. This occurred in April, and the firm dissolved in December; and he remained in that business only a year afterward. This imprisonment destroyed his business as a real estate operator here; as a buyer and seller of real estate it destroyed him, drove him out and broke him up. It is proved that he was doing a large and lucrative business before that. How large we were not permitted to tell, and the exact extent of the loss we were not allowed to give, but it will not be difficult for you to arrive at a just conclusion. He was doing business upon a large scale. I say here, in the light of this testimony, and of my own knowledge, this proceeding broke him down to the ground, destroyed his firm, destroyed his business and ruined him financially.

Now, gentlemen, this is a case calling for mighty redress; not small, but large. Mr. Olmstead swears to the same thing. He was one of the partners. It does not depend upon Mr. Kilbourn's oath alone. Mr. Olmstead swears that this proceeding ruined the firm; broke it up, and broke up their business. This treatment of Mr. Kilbourn caused a scandal to surround them that no firm could withstand. As I said

The Case of Kilbourn vs. Thompson

a while ago, the man who confronts either branch of Congress, with all its power, takes a great risk and encounters a great danger; he braves the power of the House and Senate, the power of the press, the power of human imagination, and that power which is worse than all, the disposition to hunt down a man whenever anything befalls him. All this Kilbourn had to contend with. Are you to say that with a few thousand dollars you are going to compensate this man? I hope not. He has undergone degradation, humiliation in a common jail, when guilty of no crime. If there had been no loss of health or property such treatment would call for a heavy verdict under the circumstances, because he was in the right and his antagonists in the wrong. Of course there was no malice on the part of Mr. Thompson. It is not for me to charge malice on any branch of the government. But that there was a harsh spirit of pursuit in this case I do know. It was from the 11th to the 18th of the month before an answer could be had to a writ of *habeas corpus*—that writ which goes with a power that no other writ possesses. Is this a case for light damages? I repeat that if, under the circumstances, no harm had been done to health, no harm to property, no harm to reputation, still it would be an action such as is not to be answered lightly with a few thousand dollars. This is a great question. It is as vast in its magnitude and assertions of human rights by peaceful methods as can be conceived of. It is the assertion of a principle in the face of the precedents of the govern-

ment for nearly one hundred years. It came in the centennial year, in 1876, and in that same year, through the bravery of this man, came the downfall of an arbitrary power in Congress which was as dangerous to liberty as the inquisition of Rome or as the knee-boots of James the Second.

Gentlemen of the jury, there are great landmarks in human history. You hear men speak of them as though they were built to mark the progress of man on the land. Jacob built a landmark of the stones he had rested his head upon at night, when he dreamed he saw the angels ascending and descending. He built it the next day with the stones he had used for his pillow and called it Bethel. And so this imprisonment of Kilbourn shall be as a landmark of freedom, a landmark in the assertion of right and justice. Gentlemen, not for the sake of the money, not for the sake of the dollars and cents, but for the sake of the dignity of this issue, its relation to human progress and right, its relation to constitutional law and justice, I ask you not to belittle it at this late stage. It was great at the beginning; let it be great at the close. It was a great revolution achieved by Kilbourn in setting right the principles of this government, and having them declared from the Supreme Court of the United States, in accordance with the Constitution. Now, in its closing stage, we come before you and ask that twelve men of the District of Columbia may announce to the world that they appreciate its dignity and value. Whether we ever collect a dollar or not is not your

The Case of Kilbourn vs. Thompson

affair—not mine—but whether you return a verdict that shows you cheapen liberty, cheapen your own rights, trifle with those fundamental principles which have made battlefields red with blood, or whether you arise to the dignity of the occasion, and assert in a manly, broad, strong way the approval which you have in your hearts at this moment of this brave man for doing what he has done, is another question, and one of vast importance. I will leave this case with you, gentlemen, with the parting injunction that as you measure these rights that are your own so they will be measured unto you; as you measure the great rights involved in Kilbourn's case, at some time you or your children will have them measured back to you. No man errs on the side of a high appreciation of the constitutional rights of the citizen. When spoken to about the argument of this case, and the question was submitted to me whether I would go into it now, with my connection with the Congress of the United States, I resolved the doubt in my mind by saying: "No man can make a mistake on the side of constitutional liberty. The Supreme Court of the United States has decided that Hallet Kilbourn was right from the beginning to the end in asserting his freedom from the jail." And as I stood with him in the beginning I have no hesitation in standing with him in the end. I cannot err in upholding what has been declared by the highest judicial tribunal of my country as the citizen's rights. Nor can you err unless you cheapen those rights. You cannot err by

Classics of the Bar

letting it go forth that here in this great capital the spirit of constitutional government has not died out in your hearts, and that you do not hold the life or the liberty of one of your fellow-citizens cheaply. It might have been the loss of his life as well as his liberty. If they had a right to take his liberty they had a right to take his life. Life is not dearer than liberty. Liberty is the dearest in my estimation. As to the loss of one or the other, as a choice, I would say, take my life, for without my liberty life is of no value, none whatever; not the slightest. The iron hand of power laid on Hallet Kilbourn was not more merciful than the hand of the executioner would have been on his throat. It might have been his life, for it was imperiled. It might have been lost. With these views in your minds, gentlemen of the jury, you cannot go astray. I submit this case to you in confidence that it will not grow less by reason of your treatment of it.

A verdict was returned by the jury in favor of the plaintiff for \$100,000. This verdict was set aside as excessive. Justice McArthur in rendering the opinion granting a new trial said:

"I think we can trace the influence upon the minds of the jury largely to the powerful appeal addressed to them in the argument of the counsel who closed the case on the part of the plaintiff. They were evidently moved by his eloquence and inspired by the magnanimity of his sentiments, so that they overlooked the more sober and im-

The Case of Kilbourn vs. Thompson

passive instructions of the law. While feelings of this description were laudable to the members of the jury as men, the law can make no allowance for susceptibilities of this character in its impartial administration."

Upon the second trial the jury found for the plaintiff \$60,000. This was also set aside as being excessive.

Upon the third trial a verdict for \$37,500 was rendered in the plaintiff's favor. A motion was made to set this aside as excessive and Justice Hagner announced that, upon the plaintiff's filing a remittal for \$17,500, the verdict would be allowed to stand for \$20,000. This was done and the plaintiff eventually received \$20,000.

UNIVERSITY OF CALIFORNIA LIBRARY
Los Angeles

This book is DUE on the last date stamped below.

FEB 27 1950

NOV 9 1954

dec 2

APR 30 1956

Form L9—15m-10,'48(B1039)444

UNIVERSITY of CALIFORNIA

UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 898 948 5

HV
6211
S46c
v.2

